

**EXHIBIT 1**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE: Chapter 11  
Case No. 22-11068 (JTD)  
FTX TRADING LTD., et al.,  
Debtors.  
Courtroom No. 5  
824 Market Street  
Wilmington, Delaware 19801  
Friday, January 20, 2023  
10:00 a.m.

TRANSCRIPT OF HEARING  
BEFORE THE HONORABLE JOHN T. DORSEY  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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## Agenda

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1 (Proceedings commence at 10:04 a.m.)

2 THE COURTROOM DEPUTY: All rise.

3 THE COURT: Good morning, everyone. Thank you.

4 Please be seated.

5 Mr. Landis.

6 MR. LANDIS: Good morning, Your Honor, and may I

7 please the Court. For the record Adam Landis from Landis

8 Rath & Cobb, Delaware co-counsel to the debtors in FTX

9 Trading Ltd., and the companion cases.

10 Your Honor, we filed this morning a second amended

11 agenda at Docket No. 547. The amended agenda reflects a

12 number of matters that have been consensually resolved and

13 orders have been entered.

14 Matter No. 4 on the agenda is the Alvarez & Marsal

15 application for retention. An order has been entered on

16 that.

17 Matter No. 5 is the AlixPartners application. A

18 certification of counsel has been filed and the parties are

19 in agreement with respect to the form of order.

20 Matter No. 6 is the Kroll retention for which an

21 order has been entered.

22 Matter No. 7 is the Quinn Emanuel application for

23 retention for which a certification of counsel has been

24 filed. Those matters --

25 THE COURT: I did enter those both, the

1 AlixPartners and the Quinn Emanuel, before the hearing.

2 MR. LANDIS: Thank you, Your Honor.

3 Really, it's through the good offices of the  
4 United States Trustee, back and forth negotiations and  
5 discussions on a very cooperative basis. The creditor's  
6 committee is weighing in for which are grateful on those  
7 efforts. And we don't have a need to go forward with respect  
8 to those.

9 There is a status conference at the end of the  
10 agenda that we will, but the only item that is on the agenda  
11 that will need to be heard today is the Sullivan & Cromwell  
12 retention application. For that I will cede the podium to  
13 Mr. Bromley.

14 THE COURT: Thank you.

15 Before you begin, Mr. Bromley, let me just remind  
16 those on the zoom call that this is a formal Court proceeding  
17 even though you are participating by zoom, so please leave  
18 your audio turned off, and your video turned off unless you  
19 are recognized to speak.

20 With that, Mr. Bromley, go ahead.

21 MR. BROMLEY: Good morning, Your Honor. May I  
22 please the Court, Jim Bromley of Sullivan & Cromwell on  
23 behalf of the FTX debtors.

24 Your Honor, thank you very much for taking time  
25 today. I want to first describe the resolution that we have

1 achieved with the Office of the United States Trustee.

2           The Office of the United States Trustee had two  
3 objections to the retention of Sullivan & Cromwell. The  
4 first was that there was an inadequate disclosure and the  
5 second had to do with the scope of the services that Sullivan  
6 & Cromwell, as well as Quinn Emanuel and AlixPartners, would  
7 provide.

8           We have been in conversations with the Office of  
9 the U.S. Trustee for three weeks. We received a first  
10 inquiry with respect to our application on the 27th of  
11 December. The application was filed on the 21st of December.  
12 And as is common in large Chapter 11 cases we have been in  
13 constant contact with the Office of the United States Trustee  
14 going back and forth with questions and answers, and focusing  
15 on issues that the U.S. Trustee had identified with respect  
16 to disclosure.

17           I am happy to report, Your Honor, that,  
18 notwithstanding the fact that when we sat here last time we  
19 were not yet in agreement with the U.S. Trustee, we have been  
20 able to bring that across the finish line. We have also been  
21 able to bring across the finish line a resolution with the  
22 Office of the United States Trustee to take the scope issue,  
23 which related to the three applications that were originally  
24 on today, and to move them off and to reserve rights with  
25 respect to scope, and, effectively, deal with any issues

1 after the examiner motion which is scheduled for the 6th of  
2 February.

3 In connection with the disclosure issues with the  
4 Office of the United States Trustee we have filed, in the  
5 past couple of days, two supplemental declarations of Mr.  
6 Andrew Dietderich, one of my partners, at Sullivan &  
7 Cromwell:

8 Mr. Dietderich had submitted the original  
9 declaration supporting the Sullivan & Cromwell application.

10 And the second very fulsome declaration, which was  
11 filed a couple days ago, was the product of conversations  
12 that we had been having with the Office of the U.S. Trustee.  
13 When we filed that we were able to get on the phone with the  
14 U.S. Trustee, Ms. Sarkessian, and answer a few additional  
15 questions which we then submitted a further supplemental  
16 declaration of Mr. Dietderich yesterday.

17 So, with that, Your Honor, we have been able to  
18 resolve any issues that the Office of the U.S. Trustee had  
19 with respect to Sullivan & Cromwell's disclosures.

20 I would like to note in the context of that, Your  
21 Honor, that one of the first things that we did when we were  
22 talking to Ms. Sarkessian was discuss the fact that Mr. Ryne  
23 Miller, a former partner at ours at Sullivan & Cromwell, is  
24 employed at FTX US as the general counsel. That is West  
25 Realm Shires is the entity. And that was not called out



1 specifically in the original declaration; it is now called  
2 out. Mr. Miller was listed as a party in Schedule One to Mr.  
3 Dietderich's original declaration, but we had called that  
4 with very clear specificity in his supplemental declaration.  
5 Mr. Miller as well as Mr. Wilson, a former associated of  
6 ours, who also has a role at FTX.

7           With those call-outs the Office of the U.S.  
8 Trustee is satisfied with the disclosure with respect to Mr.  
9 Miller and Mr. Wilson. And in retrospect, Your Honor, we  
10 should have gone further in the original declaration, but the  
11 fact is we were engaged in conversations with Ms. Sarkessian  
12 from December 27th with respect to this.

13           So, there was also in the context of our recent  
14 filing a statement that the declaration of Ms. Kranzley,  
15 another one of my partners, with respect to back and forth  
16 between the U.S. Trustees Office and Sullivan & Cromwell. In  
17 the context of that Ms. Sarkessian wanted me to clarify that  
18 there was a set of emails that were provided as exhibits in  
19 Ms. Kranzley's declaration and that what was not noted in  
20 those emails, because it didn't appear in the emails, was  
21 that there was not a response to an email that Ms. Sarkessian  
22 had sent earlier; just as a matter of clarification.

23           So, with these statements and the declarations,  
24 the two supplemental declarations that have been filed, it is  
25 our understanding that the U.S. Trustees Office is satisfied

1 with the disclosures. That is reflected in the form of order  
2 that has been submitted to the Court.

3 THE COURT: Before you move on, Ms. Sarkessian, do  
4 you want to --

5 MS. SARKESSIAN: Thank you, Your Honor. For the  
6 record Juliet Sarkessian on behalf of the U.S. Trustee.

7 We are resolved with Sullivan & Cromwell. I just  
8 want to clarify that the application and the initial  
9 declaration of Mr. Dietderich did not mention any connection  
10 with Mr. Miller. Yes, he was listed as a party in interest  
11 on a, you know, 15-page party in interest list, but there was  
12 no disclosure whatsoever about Sullivan & Cromwell having any  
13 connection with him, let alone that he was the individual who  
14 actually brought Sullivan & Cromwell to the attention of the  
15 debtors.

16 When Mr. Miller had been a partner at Sullivan &  
17 Cromwell he left and he went in-house to FTX US, and at that  
18 point introduced Sullivan & Cromwell. That is in the  
19 supplemental declaration, but there was no information at all  
20 about Mr. Miller in the original. So we certainly appreciate  
21 Sullivan & Cromwell recognizing that that is something that  
22 absolutely should have been included in the original  
23 declaration.

24 I also want to clarify that was certainly not the  
25 only additional disclosure we asked for. There was quite a

1 bit more and you will see that the first supplemental  
2 declaration that was filed, I think, was 81 paragraphs,  
3 something of that nature. Some of that was in response to, I  
4 think, with respect to other objectors, but a good piece of  
5 that was disclosure that we asked for. So, it was not just  
6 that one piece, it was quite a bit, and we did work with  
7 them, and we're glad that they made those additional  
8 disclosures and we were able to resolve that issue.

9 THE COURT: Thank you, Ms. Sarkessian.

10 THE COURT: Mr. McLaughlin has stood up.

11 Do you have anything with regard to the resolution  
12 with the U.S. Trustee?

13 MR. MCLAUGHLIN: No, Your Honor.

14 THE COURT: Okay. Why don't we wait.

15 Mr. Bromley, why don't you go ahead and then I  
16 will turn to Mr. McLaughlin.

17 MR. BROMLEY: Thank you, Your Honor.

18 Now that we have resolved the issues with the  
19 Office of the U.S. Trustee and noting that the unsecured  
20 creditors committee has filed a statement in support the only  
21 objection that is -- well, there are two objections that are  
22 remaining from a Mr. Winter and Mr. Brummond. They are  
23 represented by counsel here today.

24 I would just like to, before we get going on that,  
25 Your Honor, just give a short preview of the issues, and then

1 I understand that they have certain things that they would  
2 like to say.

3 Your Honor, with respect to the matter before you  
4 today we have two witnesses. We have Mr. Ray and Mr.  
5 Dietderich. They have both submitted declarations and  
6 supplemental declarations; in Mr. Dietderich's case a second  
7 supplemental declaration. We believe that the disclosure  
8 issues have been fully resolved.

9 We have been, as I noted, in constant contact with  
10 the Office of the U.S. Trustee and exchanged voluminous  
11 amounts of information. We believe that the disclosure that  
12 has been filed, a supplemental disclosure, is fully  
13 sufficient.

14 As Mr. Ray mentions in his declaration, what we  
15 are talking about here, Your Honor, is a need to move on.  
16 One of the things that the debtors have been facing,  
17 generally in these cases, is assault by Twitter. It is very  
18 difficult, Your Honor, to cross-examine a tweet, particularly  
19 tweets that are being issued by individuals who are under  
20 criminal indictment and whose travel is restricted so to  
21 speak.

22 THE COURT: I have the benefit of not being on  
23 Twitter, so I have no idea what people are saying on Twitter  
24 about this case.

25 MR. BROMLEY: Well, Your Honor, to a certain

1 extent you are brought into it because of the objections that  
2 reference those things. And it is, frankly, difficult in  
3 these circumstances to try to respond to all of those things  
4 all at once. So, we have decided not to do so. Our view is  
5 that the issue should be addressed in Court in a formal  
6 manner, and that those who have things to say should come to  
7 Court and say those things; subject to cross-examination,  
8 subject to the rules of the Court, and that is the way that  
9 we intend to proceed.

10 With respect to the application, Your Honor, I do  
11 note that there was a declaration, something, a document  
12 filed on the Court's docket last night that is characterized  
13 as a declaration by an individual who is a former legal  
14 officer within the FTX Group. I know that Mr. Winter and Mr.  
15 Brummond's counsel have requested that this hearing be  
16 adjourned as a result of that filing.

17 Your Honor, we are opposed to any such  
18 adjournment. We have already gone 70 days into these cases.  
19 An enormous of work has been done. There has already been an  
20 adjournment of these retention applications. We believe,  
21 Your Honor, that it is imperative that we put this stage of  
22 the case, the retention of professionals, aside, complete  
23 that, and move onto the next stage.

24 Now we do know that we have an examiner motion  
25 that has been filed by the U.S. Trustee and we will deal with

1 that on February 6th, but the fact is, Your Honor, if there  
2 was an adjournment made as a result of the filing by Mr.  
3 Friedberg, which followed hot on the heels of two very long  
4 and rambling tweets that were filed by Mr. Bankman-Fried --  
5 not filed, sorry, Your Honor, but posted and cited by  
6 objectors. I think its virtually certain that such activity  
7 is going to continue and that if we simply agree to adjourn  
8 something today or Your Honor decided that it was appropriate  
9 we would simply be faced by additional attacks on Twitter and  
10 additional random things that are filed.

11 Now with respect to Mr. Friedberg's filing that  
12 filing is not on behalf of any particular party. Mr.  
13 Friedberg claims to be a creditor, but he doesn't style it as  
14 an objection. It was filed late. It was filed -- frankly,  
15 it's a little bizarre if you sit down and read it, but, Your  
16 Honor, our view is that it has no place in the Court, it  
17 should be stricken from the record, and the hearing should go  
18 forward with the two witnesses that we have to the extent  
19 that counsel for Mr. Winter and Mr. Brummond have any  
20 questions.

21 THE COURT: Let me hear from Mr. McLaughlin. It  
22 was his motion to continue the hearing.

23 MR. MCLAUGHLIN: Good morning, Your Honor. For  
24 the record Jack McLaughlin of Ferry Joseph on behalf of  
25 Warren Winter and Richard Brummond, two objecting creditors.

1 Your Honor, if I may introduce to the Court my co-  
2 counsel. With me today in Court is Marshal Hoda of the Hoda  
3 Law Firm of Houston, Texas, and Patrick Yarborough of Foster  
4 Yarborough also of Houston. They are lead counsel in this  
5 matter.

6 Mr. Hoda will be speaking on behalf of our  
7 position today. First, with regard to the emergency *ex parte*  
8 motion to continue the hearing vis-à-vis the Sullivan  
9 Cromwell application, and then on any argument the Court will  
10 take on the application proffer.

11 THE COURT: Okay. Thank you.

12 MR. MCLAUGHLIN: Thank you, Your Honor. By the  
13 way, both have been admitted *pro hac vice*.

14 MR. HODA: Good morning, Your Honor. May I please  
15 the Court. My name is Marshal Hoda, I represent the  
16 individual objectors in this matter, Mr. Warren Winter and  
17 Mr. Richard Brummond. I appreciate the privilege of being  
18 able to appear before this Court *pro hac vice* today.

19 I'd like to first address the emergency motion for  
20 an adjournment that we filed yesterday. Your Honor, I am  
21 here on behalf of two individual depositors on the FTX and  
22 FTX US exchanges who collectively lost access to  
23 approximately \$400,000 in assets as a result of the FTX  
24 collapse. My clients have objected to the appointment of  
25 Sullivan & Cromwell as the debtors lead counsel because they

1 have grave concerns about the firm's lack of transparency in  
2 its mandatory disclosures, and its ability to lead an  
3 objective investigation into the FTX Group's prepetition  
4 activities.

5 Yesterday we filed an emergency motion for  
6 adjournment of the hearing on Sullivan & Cromwell's  
7 application that is set to go forward this morning. And so  
8 that is what I will speak about first.

9 I'd like to start with a brief statement of the  
10 chronology, which is helpful for context here. Sullivan &  
11 Cromwell filed its application to be appointed under Section  
12 327 on December 21st, 2022. As we point out in our papers,  
13 and as Ms. Sarkessian noted a moment ago, the original  
14 declaration of Mr. Dietderich that accompanied that  
15 application said, essentially, nothing about Sullivan &  
16 Cromwell's prepetition work, legal work, for the FTX Group  
17 entities.

18 It disclosed that Sullivan & Cromwell had, in  
19 fact, performed \$8 and a half million approximately of legal  
20 work for the FTX Group entities that said only, and I quote,  
21 that that work had been "With respect to acquisition  
22 transactions and specific regulatory inquiries relating to  
23 certain U.S. business lines;" nothing more.

24 Further, Mr. Dietderich's declaration did not  
25 disclose numerous other connections between Sullivan &



1 Cromwell, and the debtors, and the debtors' attorneys as  
2 expressly required under Bankruptcy Rule 2014, including that  
3 a former Sullivan & Cromwell partner, Mr. Ryne Miller, was  
4 the general counsel at FTX US and one of the highest ranking  
5 legal officers in the FTX Group before its collapse.

6 Accordingly, we filed an objection on behalf of  
7 Mr. Winter on January 4th and later filed an amended  
8 objection that set out additional information about Sullivan  
9 & Cromwell's relationship with the debtors, available on the  
10 public record, that was not reflected in Sullivan &  
11 Cromwell's disclosures.

12 The U.S. Trustee also filed an objection at that  
13 time pointing out that Sullivan & Cromwell's disclosures were  
14 "Wholly and sufficient to evaluate whether Sullivan &  
15 Cromwell satisfies the bankruptcy code's conflict free and  
16 disinterestedness standards." As you heard today, that has  
17 apparently been resolved, but that was the U.S. Trustees  
18 opinion, as well as ours, at the time of the filing of the  
19 original Dietderich declaration.

20 On January 17th, less than 72 hours ago, Mr.  
21 Dietderich submitted his supplemental declaration in support  
22 of Sullivan & Cromwell's retention. That declaration sets  
23 out 34 pages of additional disclosures and exhibits relating  
24 to Sullivan & Cromwell's connections with the debtors;

25 Yesterday, less than 24 hours ago, Mr. Dietderich

1 submitted his second supplemental declaration adding more  
2 facts to the mix;

3 Finally, last night, Sullivan & Cromwell submitted  
4 a revised proposed order changing the details of its proposed  
5 retention in this case.

6 Your Honor, we submit that this chronology shows  
7 gamesmanship. As both my clients and the U.S. Trustee  
8 recognize, Mr. Dietderich's original declaration was wholly-  
9 inadequate to satisfy Sullivan & Cromwell's disclosure  
10 obligations. There is no excuse for a firm, with the  
11 resources available to Sullivan & Cromwell, to wait until  
12 less than 72 hours before the hearing on its application to  
13 make any substantive disclosures about its prepetition work  
14 for the debtors, and crucial disclosures concerning its own  
15 former partner's employment as one of the top legal officers  
16 of the FTX Group.

17 Nevertheless, Your Honor, we were prepared to go  
18 ahead with the hearing today and make our arguments based on  
19 the facts available to us. Then yesterday afternoon, around  
20 2 p.m., a bombshell was lobbed into the docket in the form of  
21 the Friedberg declaration that you have heard about.

22 Mr. Friedberg, described in Mr. Dietderich's  
23 supplemental declaration as "The senior legal officer of the  
24 FTX Group," submitted a 17-page declaration setting out what  
25 he described as "Additional information about potential

1 claims that the debtors against Sullivan & Cromwell, false  
2 statements made by Sullivan & Cromwell, as well as other  
3 misconduct."

4           To be clear, Your Honor, as we stated in our  
5 emergency motion, we had absolutely nothing to do with this  
6 declaration. I have confirmed that my clients did not  
7 either. Although styled as being offered in support of the  
8 amended agenda we submitted, the declaration was prepared and  
9 submitted without any solicitation or input from us  
10 whatsoever. We were as surprised by it as anyone else.

11           That said, the allegations in the Friedberg  
12 declaration are as relevant as they are explosive. The  
13 declaration outlines several claims that Mr. Friedberg  
14 believes the bankruptcy estate has against Sullivan &  
15 Cromwell. It also outlines what the declaration characterizes  
16 as false statements in the Dietderich declarations and  
17 inappropriate conduct, alleged inappropriate conduct, by  
18 former Sullivan & Cromwell partner and high-ranking FTX Group  
19 legal officer Ryne Miller. Crucially, the Friedberg  
20 declaration also says that its author would testify  
21 competently to the facts set out there if given the  
22 opportunity.

23           Your Honor, we don't purport to vouch for the  
24 accuracy of any of the facts, allegations I should say, set  
25 out in Mr. Friedberg's declaration. Frankly, like everyone

1 else we hardly had time to process them.

2           What's clear is that the matters raised in the  
3 Friedberg declaration are central to the question of whether  
4 Sullivan & Cromwell meets the standard for retention under  
5 Section 327 and has made the appropriate disclosures under  
6 Bankruptcy Rule 2014. We believe it is in the best interest  
7 of our clients and all stakeholders to have additional time  
8 to arrange testimony, secure a deposition and, otherwise, get  
9 to the bottom of this unexpected development.

10           To sum-up on the emergency motion, I will note  
11 that as the Court is, of course, aware the bankruptcy system  
12 depends on the self-policing conduct of lawyers in making  
13 robust timely disclosures. The failure to get this right at  
14 the outset can result in a lot of pain down the road. We  
15 believe the chronology we have laid out is sufficient reason  
16 for an adjournment, that there will be no prejudice to anyone  
17 by adjourning the hearing on Sullivan & Cromwell's  
18 application for a brief period, as the Court sees fit,  
19 perhaps to the February 6th omnibus hearing only a few weeks  
20 from now. Surely, Sullivan & Cromwell can continue its work  
21 in the meantime and no harm will come to the estate.

22           With that, Your Honor, I have concluded my  
23 argument on the emergency motion. I would be happy to take  
24 any questions the Court has.

25           THE COURT: No questions.

1 Mr. Bromley, any response?

2 MR. BROMLEY: Yes, Your Honor. I take issue with  
3 much of what Mr. Hoda says. The exercise that Sullivan &  
4 Cromwell went through in crafting the supplemental disclosure  
5 is exactly the exercise that large firms who are debtor's  
6 counsel go through in every large case, right. We sat down  
7 with the Office of the U.S. Trustee for weeks going through  
8 information requests, supplementing the disclosure.

9 The disclosure issues that were raised by Mr. Hoda  
10 in his objection were all addressed in the supplemental  
11 disclosures from Mr. Dietderich. We took Mr. Hoda's  
12 objection into account, his original objection, and his  
13 amended objection and every single one of the issues that he  
14 raised was addressed in the supplemental disclosure. So,  
15 from a disclosure perspective the issues that were raised by  
16 his clients have been fully addressed.

17 The question, though, is, well, what is happening  
18 really with respect to this random filing that is made by Mr.  
19 Friedberg. Who is Mr. Friedberg and why is he making that?

20 Well, one of the issues that we're facing, Your  
21 Honor, is that Sullivan & Cromwell is front and center in  
22 connection with what has been going on with the FTX Chapter  
23 11 proceedings. And if you are part of the inner circle at  
24 FTX, and that would include Mr. Friedberg, then you have  
25 concern about the exercise that is going on.

1           On a daily basis Sullivan & Cromwell is  
2 cooperating with and providing information to federal  
3 criminal authorities and regulatory authorities. The  
4 individuals who were at, and running, and making the  
5 decisions that have brought this company to its knees are  
6 rightly concerned that the information that is being provided  
7 to authorities could lead back to their doorstep.

8           So what we have here, Your Honor, is a gentleman  
9 who ran this company into the ground, Mr. Bankman-Fried,  
10 sitting in his parent's home in Palo Alto, California with an  
11 ankle bracelet on, extradited from the Bahamas, and charged  
12 with multiple crimes by the Southern District of New York  
13 U.S. Attorneys Office.

14           And when the U.S. Attorney for the Southern  
15 District announced that indictment what did he say? One of  
16 the greatest frauds in history is what he said. He also  
17 announced that two of the founders, Mr. Wang and Ms. Ellison,  
18 had been indicted, plead guilty, and agreed to cooperate.

19           So, if you're Mr. Bankman-Fried or, frankly, Mr.  
20 Friedberg there is a concern about what is going on and what  
21 could happen to them. They can't throw stones at the U.S.  
22 Attorney's Office, but they can throw stones at debtor's  
23 counsel that is providing information to the prosecutors and  
24 the regulators; that is exactly what is happening.

25           Mr. Hoda failed to note that he had sent me an

1 email saying that he had planned to call Mr. Bankman-Fried  
2 here as a testifying witness today. We, the debtors, and  
3 Sullivan & Cromwell are fighting a ghost when we have these  
4 accusations that are being made and no opportunity to cross-  
5 examine Mr. Bankman-Fried.

6           Mr. Ray, who is here to testify, gave an interview  
7 to the Wall Street Journal this week. Mr. Bankman-Fried is  
8 immediately online criticizing what has been said. We  
9 provided a fulsome presentation to the official committee of  
10 unsecured creditors this week and for disclosure purposes  
11 posted that on the Court's docket. Mr. Bankman-Fried takes  
12 it, marks it up, and posts it criticizing everything that we  
13 have done. Mr. Bankman-Fried is behind all of this and  
14 whenever we move -- if we were to move this, wherever we  
15 moved it to there is, in my mind, an absolute certainty that  
16 he is going to try to do something to get in the way. He is  
17 lashing out.

18           Now as to Mr. Friedberg, I have to say, he has got  
19 a checkered past. It takes a lot of guts for him to put  
20 something in writing that says I was the chief compliance  
21 officer at FTX. But if you read the declaration it's a  
22 rambling declaration. Mr. Frieberg is not here. We would  
23 oppose him testifying, but this is simply an incendiary  
24 device to be thrown into the process.

25           With our -- from our perspective, Your Honor,

1 everything that needs to be done in terms of disclosure has  
2 been done --

3 THE COURT: Go ahead.

4 MR. BROMLEY: -- and what we need to do now is to  
5 proceed with the evidence that is ready to be presented. If  
6 Mr. Hoda has any cross-examination for Mr. Ray or Mr.  
7 Dietderich then we should do that. But we shouldn't be  
8 pushing this off anymore to invite other folks to be filing  
9 things at the last moment and disrupting this exercise.

10 This is a Court of law. We should be following  
11 the rules. Our application has been on file. If anyone else  
12 wanted to file an objection they could do so.

13 There are two things that I would note, Your  
14 Honor, in terms of numbers. There are almost nine million  
15 creditors in this case. Two have objected. The creditors  
16 committee is on board. The U.S. Trustees Office is on board  
17 after an extensive interaction with the debtors.

18 I would also note, as my son said last night, he  
19 sent me the statistics of Mr. Bankman-Fried's sub-stack  
20 postings 12 million views, 1,300 likes. That is like one  
21 person at Lincoln Field sitting in the top right corner  
22 saying go team and the entire rest of the stadium being  
23 empty.

24 THE COURT: All right. I am going to deny the  
25 motion for a continuance. The declaration was filed, but it



1 -- Mr. Friedberg didn't file a motion. He didn't even file a  
2 joinder to a motion. He just filed a declaration saying that  
3 he was submitting a declaration in support of somebody else's  
4 motion. That is not an appropriate -- procedurally it's not  
5 appropriate.

6 So -- and I have read the declaration and,  
7 frankly, its full of hearsay, innuendo, speculation, rumors;  
8 certainly not something I would allow to be introduced into  
9 evidence in any event. So, I will deny the motion for a  
10 continuance and we will go forward with the application.

11 MR. HODA: Your Honor, if I could just make a note  
12 for the record. I think I would be remiss if I didn't --

13 THE COURT: You need to come up to the microphone.

14 MR. HODA: I think I would be remiss if I did not  
15 note for the record that as Your Honor was speaking just then  
16 Mr. Friedberg appeared twice on the zoom screen here and  
17 waived his hand. He is apparently in virtual attendance at  
18 this meeting.

19 Again, I feel as though I should apologize for  
20 the, kind of, circus aspect of his showing up in this way  
21 again. I am surprised as anyone by this development, but I  
22 just feel that is a fact that I should note for the record so  
23 that its preserved.

24 THE COURT: I understand. I did see him and I did  
25 not recognize him intentionally because, as I said, he has

1 not filed a motion. He has not joined any motion. He is  
2 simply trying to be a witness, I suppose, but witnesses are  
3 not allowed unless there here live.

4 MR. HODA: Understood, Your Honor. As I said,  
5 purely noting for the record we are prepared to go ahead with  
6 argument on the application, the objection. So, with that I  
7 will take my seat once again.

8 THE COURT: Thank you, Mr. Hoda.

9 MR. BROMLEY: Your Honor, if I may just clarify  
10 for a moment that, Mr. Hoda, you said you are ready to  
11 proceed with argument. Are you intending to cross-examine  
12 any witnesses?

13 MR. HODA: Yes. With the Court's permission I  
14 would ask to cross-examine Mr. Friedberg. He's here on zoom.

15 THE COURT: No. He can't testify if he's not here  
16 in person.

17 MR. HODA: With that clarification we do not  
18 intend to call any witnesses. We will be making arguments on  
19 the declarations that are in the record and the arguments  
20 that we have made in amended objection.

21 THE COURT: So, you're not calling any witnesses,  
22 not putting in any evidence?

23 MR. HODA: No. Just making our arguments based on  
24 --

25 THE COURT: So, you are going to move the

1 introduction of the declarations?

2 MR. BROMLEY: Yes, Your Honor. I would like to  
3 move the admission of Mr. Dietderich's original declaration,  
4 his first supplemental declaration, and his second  
5 supplemental declaration as well as the first declaration of  
6 John J. Ray III, and the supplemental declaration of John J.  
7 Ray III.

8 THE COURT: Is there any objection?

9 MR. HODA: No objection, Your Honor.

10 THE COURT: Those declarations are admitted  
11 without objection.

12 (Declarations received into evidence)

13 MR. BROMLEY: Thank you, Your Honor.

14 Your Honor, I will proceed to argument then and  
15 reserve the right to respond to Mr. Hoda's arguments as well.

16 Your Honor, these cases were filed 70 days ago.  
17 The circumstances of the filing are well-known at this point.  
18 Mr. Ray's declaration, the so-called first day declaration,  
19 that was filed in connection with the hearings that were held  
20 on November 22nd is probably the most quoted first day  
21 declaration I have ever seen in my 33 years of practice.

22 Indeed, Mr. Ray's first day declaration included language  
23 which was quoted in the New York Times top 25 quotes of 2022.

24 What we have here in the FTX situation is a, as  
25 Mr. Ray said in his supplemental declaration, a dumpster

1 fire. The founders of this company left the company abruptly  
2 in early November in a state of Chaos. What has happened as  
3 a result of that is that an army of advisors have had to come  
4 in and bring order. That army has been under the direction,  
5 on a daily basis, by Mr. Ray. As Mr. Ray has said in his  
6 declaration, as he said in his testimony before Congress, as  
7 he said in his prepared remarks before Congress, Mr. Ray is a  
8 very hands-on leader.

9 We are in meetings on a regular basis. Mr. Ray  
10 digs deep into the details and he relies on his advisors.  
11 The advisors that are leading that charge on the legal front  
12 are Sullivan & Cromwell, supplemented by Quinn Emanuel and  
13 the Landis Law Firm here in Delaware. We have recently been  
14 joined on the scene by Mr. Hansen and the Paul Hastings Firm,  
15 and we have been doing an enormous amount of work.

16 Among the work that we have been doing is to  
17 recreate or, frankly, create from scratch the structure that  
18 should have been there from the beginning. The work that has  
19 been done has yielded enormous results. When we were here on  
20 November 22nd it was fair to say that Mr. Ray and the  
21 advisors were still in the earliest stages of trying to  
22 develop the information necessary to move these cases  
23 forward.

24 Now that we are 70 days into the case we are much,  
25 much further along. And as Mr. Ray says in his declaration

1 that could not have been done were it not for the efforts of  
2 all the advisors, but in particular Sullivan & Cromwell as  
3 lead debtors' counsel.

4           Mr. Ray makes very clear in his supplemental  
5 declaration that any limitation or denial of retention with  
6 respect to Sullivan & Cromwell would be extraordinarily  
7 detrimental to the interest of creditors and stakeholders in  
8 these cases. And one of the things that we have done, as I  
9 noted earlier, is lead the interaction with the regulatory  
10 and criminal authorities.

11           I have been doing this a long time, Your Honor,  
12 but I have not been involved in a situation where the debtor,  
13 itself, has been treated as a crime scene. We are inundated  
14 on a regular basis by demands from multiple regulatory  
15 authorities, federal and state, as well as criminal  
16 authorities for all sorts of information on an expedited  
17 basis. The number of priority emails that we get from  
18 regulatory and criminal authorities is phenomenal.

19           In close coordination with Mr. Ray, we have been  
20 responding on an expedited basis to every one of those  
21 requests. Frankly, Your Honor, I think if it were not for  
22 that type of prompt and immediate response, we would not have  
23 seen the indictments and the plea agreements that we have  
24 seen to date. There is a lot more to do and the next stage  
25 of the case is about to begin. With us being joined by the

1 creditor's committee we're ready to move on to that next  
2 stage. So, I think that the justification for the  
3 continuance of the status quo with respect to Sullivan &  
4 Cromwell is manifest.

5           The real question comes down to the legal  
6 standard. Disinterestedness and the holding of an adverse  
7 interest. The disclosure that we have filed, in my  
8 experience, is the most fulsome disclosure that I have ever  
9 seen any debtor's counsel make in any case. We have gone  
10 down to extraordinary levels of detail to matters that are  
11 simply of \$1,000; we have listed every one of them out.

12           The concerns that have been raised have said,  
13 okay, Ryne Miller, he was a partner at Sullivan & Cromwell  
14 and he left the firm and took on the role as general counsel  
15 of FTX US. And that is West Realm Shires as a corporate  
16 name. Mr. Wilson was a former associated at Sullivan &  
17 Cromwell. He did not leave Sullivan & Cromwell to go to FTX,  
18 he left to go to the Fenwick & West Law Firm. Fenwick & West  
19 is the law firm that served as general outside counsel to  
20 FTX. From Fenwick & West he then left and went to FTX  
21 Ventures.

22           It is true that the firm has done work for certain  
23 FTX entities prior to the petition date, but that in and of  
24 itself, as case law is clear, is not in and of itself not  
25 disqualifying. Indeed, its virtually unheard of for a major

1 law firm who can handle the type of matters that are raised  
2 in a case of this complexity to not have a pre-existing  
3 relationship.

4 I have been debtor's counsel in multiple cases  
5 over 30 years. I have never been debtor's counsel in a  
6 situation where my firm did not have an existing, pre-  
7 existing relationship with the debtors. So, the mere fact  
8 that Sullivan & Cromwell had done work is irrelevant.

9 The question is whether or not any of that work  
10 goes to any of the issues that we're facing and if so, how  
11 would it go to those issues. Is there anything about the work  
12 that we have done in the past or the relationships that we  
13 have that would be disqualifying, and the answer to that is  
14 no.

15 As Mr. Dietderich makes clear in his declaration  
16 Sullivan & Cromwell has two types of clients. Our system,  
17 when you fill-out a conflicts check and a client comes in, is  
18 you have to decide whether or not is this a regular client or  
19 is it a particular matters client. Why is there that  
20 distinction?

21 Well a regular client is a client that we have a  
22 long-standing and broad based relationship with where we do  
23 lots of different work for that client over a broad spectrum  
24 of matters. And in most circumstances those clients have  
25 been clients of the firm for years, in many circumstances for

1 decades.

2           On the other hand, we have particular matters  
3 clients. A particular matters client is somebody who comes  
4 in with a particular matter who asks for advice on a specific  
5 matter. Now why is there that distinction? Well in our  
6 intake system a regular client doesn't have to go through the  
7 same type of rigorous review that a particular matters client  
8 comes in because if we are dealing with one of those major  
9 clients, and even though we're a firm with a long history,  
10 believe me, there's not all that many. You know that that  
11 big name client, and I'm not going to disclose them, but you  
12 can imagine who they might be, we know, we don't have to  
13 focus as hard on that because it's a big and existing client.

14           Particular matters are different. They are folks  
15 who come in, they ask for assistance on a particular matter,  
16 it then goes to our intake committee and the intake committee  
17 looks at that particular matter, we look at everything that  
18 it might touch on and relate to, and we make a decision with  
19 respect to that particular matter. Every single matter that  
20 came in from FTX, any FTX entity, was a particular matter.

21           Now, one of the things Sullivan & Cromwell excels  
22 in is transactional work and regulatory work. The majority  
23 of the work that we did here for FTX fell into those  
24 categories.

25           Now, it's also important to look at the timeline



1 of Sullivan & Cromwell's work with FTX. FTX, as we've told  
2 Your Honor, is not an entity that had a long history. The  
3 FTX world started in 2017 with the creation of Alameda, the  
4 hedge fund. Our work with FTX, any FTX entity, started in  
5 the summer of 2021. We had nothing to do with the  
6 establishment of Alameda; we had nothing to do with any of  
7 Alameda's operations. We had one matter that Mr. Dietderich  
8 was involved in with respect to the Voyager bankruptcy that  
9 Alameda was involved in, but we were not there when Alameda  
10 was established, we were not general corporate counsel to  
11 Alameda; we didn't have that type of relationship with  
12 Alameda, we had a particular-matters relationship.

13 FTX.com, the international exchange. Well, that  
14 entity is FTX Trading Limited. It was established in 2019,  
15 two years before Sullivan & Cromwell even came in contact  
16 with FTX.

17 FTX U.S., established in 2019; again, two years  
18 before Sullivan & Cromwell got involved with FTX. We did not  
19 have anything to do with the creation of these entities, we  
20 didn't structure them, we didn't incorporate them, we didn't  
21 act as secretary on board meetings; we were not general  
22 outside counsel with respect to those entities.

23 We never represented any of FTX entities in a  
24 capital raise, we never represented them in issuing debt; we  
25 represented them in specific transactional situations, none

1 of which touch on any of the issues that have been raised to  
2 date.

3 Now, to the extent that anything comes out that  
4 there's a transaction that we may have been involved in might  
5 have an issue that needs to be investigated, we of course  
6 will not be involved in that. The Quinn firm is here, the  
7 Landis firm is here, and Paul Hastings is here. This is the  
8 standard way that large firms deal with these types of issues  
9 in cases of this magnitude.

10 It is not surprising that creditors who are  
11 inexperienced with dealing with large corporate bankruptcies  
12 might say is that the way it really works, but, Your Honor,  
13 we know that is the way it works.

14 It was very clear to Mr. Ray when he decided, one,  
15 to file these Chapter 11 cases and, two, to retain Sullivan &  
16 Cromwell as 327(a) counsel that there would be a need for  
17 conflicts counsel. And so he immediately, the first day or  
18 two of his occupying the office of chief executive officer,  
19 he reached out to Quinn Emanuel, he interviewed them and he  
20 hired them.

21 Now, we all know the reputation of Quinn Emanuel.  
22 This is not a firm that is a walk in the park. Quinn Emanuel  
23 is a well known, high profile and successful law firm. It is  
24 not all that common, frankly, to have large cases where  
25 there's a firm like Sullivan & Cromwell and a firm next to it

1 like Quinn Emanuel, and Mr. Ray recognized that this was a  
2 special case and that he needed to have that type of support.

3           So when you're looking at the question of whether  
4 or not there is -- we hold an interest adverse to the estate,  
5 the disclosure makes clear that we do not. There's nothing  
6 in the record that indicates that Sullivan & Cromwell holds  
7 an interest adverse to the estate and all of the disclosure  
8 demonstrates that we are a disinterested person.

9           Another thing that is raised by the objectors as a  
10 problem is the fact that Sullivan & Cromwell was paid for its  
11 work before the petition date and that, therefore, it somehow  
12 constituted -- the payments, therefore, somehow constituted  
13 preferences that are challengeable under the Pillowtex case.  
14 But we make clear in Mr. Dietderich's declaration, every  
15 payment that was received within the 90 days, the amount of  
16 the payment, and the number of days that the bill remained  
17 outstanding. We reviewed all that with the Office of the  
18 United States Trustee. Your Honor, every one of those  
19 payments it's clear it was made in the ordinary course.

20           There was no antecedent debt that was paid off  
21 just prior to the filing because that's what the Pillowtex  
22 case is about. In that case, the Jones Day firm -- Your  
23 Honor, is there a way to -- it's kind of distracting to have  
24 -- thank you, I appreciate that.

25           THE COURT: You can turn your screen off too, if

1 you want.

2 MR. BROMLEY: Oh, can I? Oh, that's good. That's  
3 much better, thank you. I was wondering if that was the  
4 Jones Day firm -- but in the Pillowtex case, the  
5 circumstances were all about an acceleration of payments on  
6 overdue bills that were made -- where payments were made on  
7 the eve of bankruptcy. That's not what happened here, as Mr.  
8 Dietderich's declaration shows in detail every amount, the  
9 number of days the amounts were outstanding -- or the bills  
10 were outstanding. So there's no preference issue here, Your  
11 Honor.

12 From our perspective, the objections of Mr. Winter  
13 and Mr. Brummond are resolved. There are disclosure  
14 questions; every one of those questions has been answered.  
15 The main thing that they indicate was a lack of clarity with  
16 respect to Mr. Miller and Mr. Wilson; we have given absolute  
17 clarity with respect to both of them.

18 A question with respect to the preference amounts  
19 or the amounts that are payable within the preference -- that  
20 were paid within the preference period, we go through every  
21 single payment, including the time of the invoices were  
22 outstanding, making it clear that none of them are  
23 preferences.

24 And with respect to -- just generally, with  
25 respect to the matters that -- a lack of disclosure with

1 respect to the description of the matters, Mr. Dietderich  
2 goes very carefully through each of the matters and describes  
3 them.

4           So we feel that we have made an enormous amount of  
5 disclosure, more than is generally done in these cases. We  
6 recognize that the exercise with the Office of the U.S.  
7 Trustee took longer than we would have liked, but we think it  
8 was a fulsome and successful exercise. I've had few  
9 adversaries -- and I say this respectfully -- as relentless  
10 as Ms. Sarkessian and I am tired of having dealt with her.

11           (Laughter)

12           MR. BROMLEY: And I say that with the greatest  
13 amount of respect. We feel that everything that we have put  
14 in our disclosure satisfies -- now clearly satisfies the  
15 Office of the U.S. Trustee and, in my mind, that is the  
16 highest standard.

17           So, Your Honor, our view is that we have satisfied  
18 the disclosure requirements, that there's a clear and  
19 convincing argument for the retention of Sullivan & Cromwell,  
20 and we ask that the Court enter the order.

21           THE COURT: Thank you, Mr. Bromley.

22           Does anyone else wish to speak in support before  
23 we go to the objectors?

24           MR. HANSEN: Good morning, Kris Hansen with Paul  
25 Hastings, proposed counsel to the Official Committee.

1           Your Honor, we just briefly would say that the  
2 committee stands by the statement that it filed with respect  
3 to the Sullivan & Cromwell retention application. The  
4 committee is satisfies with the disclosures that they've  
5 made. We believe that an order should be entered today  
6 approving their retention and we believe that the failure to  
7 do so would be extremely detrimental to these cases for many  
8 reasons and absolutely not in the best interests of the  
9 estates.

10           As we also said in our statement, Your Honor, the  
11 committee intends to do the job that it's authorized to do  
12 under Section 1103(c)(2) of the code, which is to investigate  
13 all of the financial affairs of the debtors, including all of  
14 the fraudulent allegations, and that also includes the  
15 evaluation of all professionals who were involved with the  
16 debtors on a prepetition basis, but that investigation  
17 doesn't need to preclude the retention of Sullivan & Cromwell  
18 here today. As we noted in our statement, a retention  
19 doesn't grant a release, it allows the cases to move forward  
20 with the debtor's chosen counsel and it brings some  
21 credibility and structure to the process, and that's what we  
22 believe is necessary here.

23           Thank you, Your Honor.

24           THE COURT: Thank you.

25           Anyone else?

1 (No verbal response)

2 THE COURT: Ms. Sarkessian, do you want to give  
3 one last shot to Mr. Bromley before we --

4 (Laughter)

5 MS. SARKESSIAN: Your Honor, I will say, I take  
6 relentless as a compliment.

7 (Laughter)

8 THE COURT: Okay, all right.

9 All right, let me hear from the objectors.

10 MR. HODA: Thank you, Your Honor. Again, Marshal  
11 Hoda here on behalf of the objectors, Mr. Warren Winter and  
12 Mr. Richard Brummond.

13 Your Honor, our amended objection sets out four  
14 reasons why Sullivan & Cromwell should not be approved under  
15 Section 327 and Rule 2014. I'll provide a brief statement of  
16 those reasons here and point you to what we believe is good  
17 authority on which those reasons are based.

18 For clarity, Your Honor, I'll group our four  
19 objections into two buckets. First is what I'd call the  
20 investigative conflicts bucket. These objections turn,  
21 ultimately, on the nature of the FTX Group's prepetition  
22 activities and the effect that context has on the decision to  
23 retain Sullivan & Cromwell in this matter.

24 The debtors CEO, John Ray III, Mr. John Ray III,  
25 respectfully, confirmed in his congressional testimony and in

1 his supplemental declaration that the FTX Group was engaged  
2 in, quote, "old fashioned embezzlement, just taking money  
3 from customers and using it for your own purposes," close  
4 quote.

5 This included massive misappropriation of customer  
6 funds that were used for improper purposes, including what  
7 Mr. Ray described as a \$5 billion, quote, "spending binge,"  
8 close quote. The FTX Group went on in 2021 and 2022.

9 Given these facts, of course, every prepetition  
10 transaction must be investigated and every potential estate  
11 claim considered. This includes the actions of the debtors'  
12 current and former executives, and the third party  
13 professionals and firms who advised them as this spending  
14 spree played itself out.

15 We know from Sullivan & Cromwell's own disclosures  
16 that the firm advised the FTX Group in several of the large  
17 transactions it made during this spending binge. We also  
18 know that two former Sullivan & Cromwell lawyers were amongst  
19 the FTX Group's top-ranking legal officers. Finally, we know  
20 that a number of current and former Sullivan & Cromwell  
21 clients were amongst the FTX Group's business partners.

22 With this background in mind, the thrust of the  
23 investigative objections comes into view. Sullivan &  
24 Cromwell has extensive actual and potential conflicts created  
25 by the necessity of investigating its own role in the FTX



1 Group's prepetition activities, the activities of former  
2 Sullivan & Cromwell lawyers at the top of the FTX Group's  
3 internal legal structure, and the activities of various of  
4 Sullivan & Cromwell's own current and former clients.

5 I'll just briefly point out some of the  
6 authorities we cite on these points, Your Honor; in  
7 particular, the Bohack case and the Get-N-Go case.

8 In Bohack, a Second Circuit decision, the question  
9 was whether a lawyer who was, quote, "close personal friends  
10 and business associates," close quote, with the board  
11 chairman of the bankrupt entity could serve as counsel when  
12 there were questions about the chairman's liability for  
13 prepetition participation in fraudulent transactions. The  
14 court held that he could not because, quote, "an attorney who  
15 has been closely related by professional, business, and  
16 personal ties to those whose conduct may now be suspect is  
17 evidently in no position to make any objective appraisal of  
18 the nature and extent of their involvement."

19 Similarly, in Get-N-Go the question was whether a  
20 law firm that had advised the debtor in various prepetition  
21 corporate transactions that had come under suspicion could be  
22 appointed as bankruptcy counsel under Section 327. The court  
23 denied the firm's application, writing that having counseled  
24 some of the parties in the very transactions that, quote,  
25 "deserved examination," the firm could not, quote, "provide

1 the objective and independent advice regarding the validity  
2 or propriety of these transactions as is required for the  
3 debtor's performance of its fiduciary obligations."

4           Your Honor, we believe these cases dictate the  
5 result here. Just as the firms seeking to be retained in  
6 Bohack and Get-N-Go were found to be unable to objectively  
7 investigate and advise about transactions in which they had  
8 personally participated, or about the actions of persons with  
9 whom they had deep personal and professional ties, Sullivan &  
10 Cromwell will not be able to objectively advise the debtors  
11 as to the issues raised by the FTX Group's spending binge and  
12 the conduct of former Sullivan & Cromwell lawyers.

13           Next, Your Honor, I'll turn to the other bucket,  
14 which is the preference claim. Mr. Dietderich's original  
15 declaration revealed a pattern of payments by the FTX Group  
16 to Sullivan & Cromwell that showed a marked jump on November  
17 3rd, 2022, just after the FTX crisis began and shortly before  
18 the FTX Group declared bankruptcy.

19           In light of the additional disclosures that were  
20 offered in the supplemental declaration, some of those  
21 concerns have been ameliorated. We would note that we did  
22 not have the benefit of those supplemental disclosures at the  
23 time the objection deadline passed. Nevertheless, Mr.  
24 Dietderich's supplemental declaration continues to show  
25 inconsistencies that we believe require a ruling on the

1 preference issue. It notes, for instance, that Sullivan &  
2 Cromwell received a \$4 million retainer from the FTX Group on  
3 November 9th, more than 2.4 million of which was used to pay  
4 down unspecified prepetition invoices.

5 Finally, in the Friedberg declaration, for which  
6 we have made an offer of proof today -- or at least an offer  
7 to investigate further -- allegations were made that these  
8 payments were improperly taken from solvent entities in what  
9 can only be described as unusual circumstances.

10 Your Honor, briefly on this point, the cases make  
11 clear that the Court takes all facts and circumstances into  
12 account when considering whether a payment in the preference  
13 period was made in the ordinary course of business. Courts  
14 consider factors such as the timing of the payment and  
15 whether it constituted a deviation from the pattern of prior  
16 payments where there was an ongoing relationship. The First  
17 Jersey Securities case, with which the Court will certainly  
18 be familiar, is an archetypical example.

19 It is also the case, under Pillowtex, that the  
20 preference analysis must be carried out before retention of a  
21 firm under Section 327. Accordingly, we request that the  
22 Court issue a ruling on the preference issue as part of its  
23 consideration of Sullivan & Cromwell's application.

24 That is the sum and substance of our arguments. I  
25 would leave the Court with one last point before closing. In

1 its reply and in counsel's argument today and various  
2 arguments that have been offered, and Mr. Ray's declaration  
3 and supplemental declaration in support of the retention of  
4 Sullivan & Cromwell, many have pointed to the practical  
5 benefits of retaining Sullivan & Cromwell because of its  
6 existing familiarity with the business and the work it has  
7 already done.

8           With due respect to the work that has been done  
9 and due respect to those who have done it, I would point out  
10 that the Third Circuit has expressly rejected such arguments  
11 as relevant under Section 327.

12           The important case here is Pricewaterhouse.  
13 There, the debtors sought to retain Pricewaterhouse as their  
14 accountant and financial adviser. They selected the firm  
15 precisely because it had provided them with prepetition  
16 services and, thus, developed expertise regarding their  
17 financial affairs and needs. At the same time, the debtors  
18 and Pricewaterhouse acknowledged that the firm was a creditor  
19 of the debtors and, thus, *prima facie*, ineligible for  
20 appointment under Section 327.

21           Writing for the Third Circuit, then Judge Alito  
22 noted that the debtors had, quote, "stressed the practical  
23 benefits," close quote, of employing Pricewaterhouse, but  
24 rejected that argument as inconsistent with the plain  
25 language of Section 327, which of course, as Your Honor

1 knows, requires disinterestedness in all cases.

2           The court held that all professionals must meet  
3 the disinterestedness standard and noted, quote, "Bankruptcy  
4 Courts cannot use equitable principles to disregard  
5 unambiguous statutory language," close quote.

6           We would also note, practically speaking, that we  
7 do respect the work that has been done. Given the  
8 availability of other large firms, that it is not impossible  
9 to conceive that Sullivan & Cromwell would be replaced as  
10 counsel in this case. I was told once that, when you find  
11 yourself in a hole, stop digging, and perhaps that is what  
12 should be done here.

13           Finally, we would note that, in response to many  
14 of the objections we have raised, Sullivan & Cromwell has  
15 noted that it will use conflicts counsel to investigate  
16 certain matters in which the firm itself may have been  
17 involved or former partners of the firm may have been  
18 involved, or in which current and former clients of Sullivan  
19 & Cromwell's may have been involved. I would note, Your  
20 Honor, that that limitation appears nowhere in the proposed  
21 order as it was originally submitted or as it was resubmitted  
22 last night, and that those representations were only made  
23 after our objection essentially forced the firm to go on the  
24 record about these matters.

25           So we would urge the Court, for all those reasons,

1 to reject Sullivan & Cromwell's application and, in the event  
2 that the Court does approve the application, we would urge  
3 the Court to add language making explicit that in those  
4 certain categories that there should be carveouts in which  
5 Sullivan & Cromwell will not be involved in investigation.

6 With that, Your Honor, I would conclude my  
7 argument and would be happy to take any questions.

8 THE COURT: No questions. Thank you.

9 Mr. Bromley, any response?

10 MR. BROMLEY: Your Honor, I just have a couple of  
11 minor points in response.

12 With all due respect to Mr. Hoda, it's clear that  
13 he has not practiced in Bankruptcy Court and understands the  
14 way things work here. We have from the very beginning of  
15 this case had, from the very moment that Quinn Emanuel was  
16 hired, made it clear that they are available to do matters  
17 that Sullivan & Cromwell, for one reason or another, might  
18 not be able to do. And to the extent that Sullivan &  
19 Cromwell and Quinn Emanuel and the Landis firm are able to do  
20 it and Paul Hastings is unable to do it, there are other  
21 firms that would be available to Mr. Ray to do it.

22 So the mere fact -- I know he'd like to take  
23 credit for the concept of conflicts counsel in bankruptcy  
24 cases, but that's been something that's been going on for  
25 decades.

1           With respect to the two cases that he cited,  
2 Bohack and Get-N-Go, first of all, they are so fundamentally  
3 different that it bears repeating -- or noting. First of  
4 all, they're not Third Circuit controlling precedent, but the  
5 Get-N-Go case, which is a Bankruptcy Court in the Northern  
6 District of Oklahoma case from 2004, basically the -- what  
7 the court noted was that the debtor's relationship with a  
8 client of the proposed debtor's counsel permeates every --  
9 almost every aspect of the case, issues of characterization  
10 of debt and equity, of allocation of resources, of the  
11 validity and sufficiency of consideration, and the court goes  
12 on. This is a small case with a small firm that had an  
13 extraordinarily large client that was a counter-party to the  
14 debtor, that is not the situation that is faced here.

15           The Bohack case is an interesting one as well  
16 because facts make the law, right, Your Honor? And this,  
17 while being a Second Circuit case from 1979, notes that among  
18 other connections, that the partner in the law firm and the  
19 individual who controlled the debtor are the only remaining  
20 officers of the debtor. Even the law firm conceded that of  
21 the personal ties with the individual who controlled the  
22 debtor and the financial stake in the company are unusual.

23           This is not a situation where anyone from Sullivan  
24 & Cromwell is on the board of directors or controls this  
25 company or had any role in that way, shape, or form. So,

1 with all due respect, Your Honor, we believe the Bohack and  
2 Get-N-Go cases are inapposite in this situation.

3 We believe, Your Honor, that we have satisfied all  
4 of the requirements of Section 327(a), disinterestedness, of  
5 being a disinterested person and not holding an interest  
6 adverse to the debtors. We believe that the extensive work  
7 that we did with the U.S. Trustee's Office to cure problems  
8 that they had with respect to the disclosure is an obvious  
9 indication that that work has been done and been done  
10 successfully.

11 So, Your Honor, we ask that the Court enter an  
12 order approving the retention of Sullivan & Cromwell.

13 THE COURT: Thank you.

14 All right, I'm going to take a short recess. I'll  
15 come back and I'll give you my ruling. Let's take a 30-  
16 minute recess.

17 (Recess taken at 11:12 a.m.)

18 (Proceedings resumed at 11:51 a.m.)

19 THE COURT: All right. Well, the issue before me  
20 is the motion to retain Sullivan & Cromwell as counsel for  
21 the debtors in these cases.

22 Section 327(a) provides that a debtor may retain  
23 professionals that do not hold or represent an interest  
24 adverse to the estate and that are disinterested persons.  
25 Mr. Winter and Mr. Bremmer -- excuse me, Brummond, have



1 objected to the retention of Sullivan & Cromwell as counsel  
2 to the debtors based on several issues. For the reasons I'll  
3 discuss in a moment, I'm going to overrule those objections  
4 and approve the retention.

5 First, the objectors argue that because Sullivan &  
6 Cromwell represented debtors prepetition there's a potential  
7 conflict of interest with any of the matters with which  
8 Sullivan & Cromwell was involved that might require an  
9 investigation. Of course, 1107(b) of the code tells us that  
10 just because a professional is sought to be retained who may  
11 have done work for the debtor prepetition is not  
12 automatically disqualifying.

13 In addition, they argue that because two former  
14 Sullivan & Cromwell attorneys worked for the debtors  
15 prepetition and because clients of Sullivan & Cromwell may be  
16 creditors of the debtors in these cases that they have a  
17 conflict of interest and cannot be retained.

18 As a preliminary matter, there's nothing in the  
19 record before me to indicate that any of the -- any  
20 investigation would be required of those transactions with  
21 which Sullivan & Cromwell might have been involved.  
22 Moreover, even if they were, debtors have retained conflict  
23 counsel to conduct any investigation that might touch on  
24 those issues. There's no evidence of any actual conflict  
25 here.

1           To the extent there may be a potential conflict,  
2 requiring an investigation, for example, of one of the  
3 transactions they were involved, or an investigation of the  
4 attorneys who were former Sullivan & Cromwell attorneys,  
5 those are ameliorated -- those are only potential conflicts  
6 and the Third Circuit has said that a potential conflict is  
7 not per se disqualifying. That's In re Boy Scouts of  
8 America, 35 F.4th 149 and 157, a 2022 case.

9           Here, any potential conflicts are ameliorated by  
10 the fact that there's conflicts counsel in place. And that's  
11 something that happens in every large bankruptcy case. It  
12 would be almost impossible to find a case of this size or  
13 even -- well, this is what we call a super-mega case -- even  
14 in a mega case you would find -- or a large case, it would be  
15 difficult to find debtor's counsel that didn't have other  
16 clients who might be clients of the debtor's counsel, but  
17 that's why we have conflicts counsel. It happens all the  
18 time and not something that is disqualifying.

19           The objectors point me to the Bohack and the Get-  
20 N-Go cases to show that where there is a significant  
21 relationship with persons involved -- and, in this case, it  
22 would be the two counsel who were -- previously worked for  
23 S&C -- that there's a disqualifying conflict. Those cases  
24 are significantly different than this case. Small firms, big  
25 cases, where it represents a huge amount of their case, for

1 example -- or, excuse me, a huge amount of their income, for  
2 example.

3           And this case is significantly different because  
4 here I have Mr. Ray and four independent directors appointed  
5 by Mr. Ray who are all consummate professionals, who were not  
6 involved in the company's collapse, and there's no evidence  
7 that Mr. Miller or Mr. Wilson are involved in the management  
8 of the debtors at this time. There's simply nothing in the  
9 record that would lead me to believe that Mr. Ray and the  
10 independent directors would not -- and, by the way, they're  
11 the ones running the debtors here, not Sullivan & Cromwell;  
12 Mr. Ray is the one who runs the debtors, he makes the  
13 decisions with his board.

14           So I have no concerns about any potential  
15 conflicts of interests that would require me to disqualify  
16 Sullivan & Cromwell in this case.

17           The second basis for the objectors request that I  
18 deny the retention is the potential for a preference. And  
19 they point to a \$4million retainer, a portion of which was  
20 used to pay prepetition invoices that was given to Sullivan &  
21 Cromwell prior to the filing of the bankruptcy. The  
22 objectors argue this creates a Pillowtex issue, showing that  
23 Sullivan & Cromwell holds an interest adverse to the debtors.

24           Mr. Dietderich's testimony through his  
25 declaration, which was unchallenged, clearly shows that,

1 based upon the payment history between the debtors and  
2 Sullivan & Cromwell, the payments were made -- the payments  
3 made within the 90-day preference period constitute ordinary  
4 course payments and, therefore, would not constitute  
5 preferences that would be recoverable by the debtors in these  
6 cases.

7 With that, as I said, I'm going to overrule the  
8 objection and I will enter the order appointing -- or, excuse  
9 me, approving the retention of Sullivan & Cromwell.

10 Are there any questions?

11 MR. BROMLEY: None from the debtors, Your Honor.

12 MR. HODA: Thank you for hearing us here today,  
13 Your Honor.

14 THE COURT: Thank you.

15 All right, anything else today before we adjourn?  
16 I thought I was going to get out of here.

17 MR. GLUECKSTIEN: Good morning, Your Honor. We  
18 can, I think, very briefly. For the record --

19 THE COURT: Oh, we have the status conference.

20 MR. GLUECKSTIEN: -- Brian Glueckstein, Sullivan &  
21 Cromwell, for the debtors.

22 The only other item on the agenda, Your Honor, is  
23 just the status conference that the Court requested, I think  
24 just more by way of update after the second day hearing last  
25 week with respect to the redaction and creditor matrix-

1 related issues that were addressed at that hearing. The  
2 Court -- and we thank the Court -- did enter an order this  
3 morning approving that motion on a final basis, including the  
4 three-month authorization to redact information with respect  
5 to all customers of the FTX debtors.

6 I did want to just address very briefly, there  
7 were, I believe, three questions that Your Honor had asked  
8 about that we provide an update on today, the first of which  
9 was whether -- confirmation whether the debtors providing  
10 their creditor matrix and related, you know, filings with the  
11 Court can distinguish between customers and other creditors.  
12 The answer to that, Your Honor, is yes. Our top 50 creditor  
13 list that's on file had done that with respect to non-  
14 customer creditors.

15 We did file an amended creditor top 50 list last  
16 evening for the dot com silo that's un-redacted, as we  
17 discussed at the hearing last week, the publicly disclosed  
18 information about the members of the Official Committee of  
19 Unsecured Creditors, in addition to any information about the  
20 non-customer, non-individual creditors on that list.

21 But let me address very briefly the creditor  
22 matrix. And I know that the Office of the U.S. Trustee is --  
23 it's an issue that they're focused on as well. I think  
24 that's where this distinction and the redaction issues is  
25 most relevant, at least immediately.

1           Your Honor, the debtors have now assembled a full  
2 creditor matrix that has more than 9.7 million potential  
3 creditors on it, including customers. There are still some  
4 potential names being identified. We do expect, Your Honor,  
5 to file with -- in accordance with the Court's order, a  
6 redacted version of the creditor matrix very early next week,  
7 we're targeting Monday, now that we have that information.

8           There are a relatively small number of non-  
9 customer creditors across the debtor silos, approximately  
10 7,000 or so. So, of the number we're talking about here,  
11 it's a very small percentage that are non-customers, but  
12 there are some such creditors, of course, who are vendors,  
13 employees, contract counterparties (indiscernible)  
14 counterparties, and other creditors who are not customers.  
15 Even within that 7,000, however, there is some significant  
16 overlap between what we're calling our customer list and  
17 creditors who have relationships with the debtors in other  
18 capacities, including vendors -- I'm sorry, employees,  
19 contract counterparties, who are also customers of the  
20 debtors.

21           So anybody who is a customer at all is being  
22 redacted and, obviously, the terms that are set forth in your  
23 order will be complied with.

24           Your Honor, one thing I do want to note with  
25 respect to the creditor matrix -- and I know this is

1 important and this is a practical issue -- the debtors are  
2 going to file -- are intending to file and, as set forth in  
3 the order, are required to file un-redacted versions under  
4 seal of documents where redactions have been made and to  
5 provide those un-redacted copies to the Office of the United  
6 States Trustee, the committee, and others as provided for in  
7 the order, and we are going to do that. The issue with  
8 respect to the creditor matrix, however, Your Honor, is a  
9 practical one that I want to just put on the record.

10           The 9.5-plus million entries on the creditor  
11 matrix makes it pretty close to impossible. And I'm informed  
12 by the technical experts that the full matrix, if we were put  
13 it into kind of a PDF document form, would be something like  
14 150,000 pages and would need to be filed as many dozens of  
15 separate files due to size limitations and things like that  
16 to file it under seal with the Court.

17           As a result, what we are able to do is to provide  
18 the matrix in links to about 18 to 20 maxed-out Excel files  
19 containing about 500,000 rows each to the U.S. Trustee and to  
20 the Court so that they can be accessible, and those files are  
21 hosted -- will be hosted by Kroll, our claims agent. So we  
22 will be able to access the full creditor matrix, but I think,  
23 as a practical matter, it's not really possible to put the  
24 entirety of that nine million names under seal on the docket  
25 per se, but we will be able to make it available to the Court

1 by just linking on the files.

2 All the other documents that we are redacting  
3 names from, customer names from, certainly we will file full,  
4 un-redacted copies under seal.

5 The second question the Court asked and we just  
6 briefly addressed was just to confirm whether -- you know,  
7 full identifying information for the non-individual, non-  
8 GDPR, non-customer creditors. So, for the institutions who  
9 are not customers, will that information be un-redacted and  
10 fully provided as required by the Bankruptcy Rules, and the  
11 answer to that is yes. As I stated, we will do that with  
12 respect to the creditor matrix and all the filings, we are in  
13 the process of doing that.

14 The third issue Your Honor raised that came up in  
15 the discussion at the end of the hearing on this motion last  
16 week was what the debtors are able to do in terms of  
17 identifying non-customer creditors who need to be redacted  
18 under the current order, under the portion of that order  
19 permitting redactions to comply with the GDPR. And on that,  
20 Your Honor, I can report that the debtors do have some  
21 ability to identify those non-customer individual creditors  
22 who are protected by the GDPR from their books and records,  
23 but certainly not all.

24 For a number of the non-customer individual  
25 creditors, the debtors do not have physical addresses on file



1 that would allow us to, you know, identify whether people are  
2 located in one jurisdiction versus another. And what we're  
3 intending to do, Your Honor, is to address this in two ways:  
4 identifying from a combination of the debtors' books and  
5 records where we can those individual non-customers that  
6 under the current order need to have their names redacted,  
7 and we are also intending to give notice to the affected non-  
8 customer individual creditors -- it's only about 2,000  
9 people, which, you know, it's not insignificant, but compared  
10 to the nine and a half million at this time since we're  
11 redacting in full all of the customers -- notice that and an  
12 opportunity to contact the debtors to provide information to  
13 us to effectively self-verify that they are protected by the  
14 GDPR and should be redacted.

15           We expect that process to only take a short period  
16 of time, at which point anybody who is not identified and  
17 otherwise covered by the order would be un-redacted from  
18 filings going forward.

19           Lastly, Your Honor, I just want to address  
20 briefly, there was -- I mentioned that we filed the revised  
21 top 50 list with respect to the committee members last  
22 evening, we are also evaluating the docket as to any other  
23 customers who have appeared in this case who have self-  
24 identified as such to redact those names from redacted  
25 filings going forward. There was a letter that was submitted

1 to the Court by counsel for the media objectors on January  
2 18th suggesting, as I read it, that the debtors go much  
3 further than that and somehow look to social media and  
4 Twitter and third party websites for statements that would  
5 identify customers publicly. We submit, Your Honor, that  
6 that would be impractical and not appropriate.

7           We think that the way to proceed on this, as we  
8 said, if people are free to self-identify, if customers  
9 identify themselves and appear in this case, identify  
10 themselves as customers, there would be no need, obviously,  
11 for us to redact them any longer, but we don't think it would  
12 be appropriate to have us go out into, you know, sources  
13 other than this Court's docket to identify those customers  
14 and un-redact them.

15           So those were the points I had to address, Your  
16 Honor, in response to the questions that the Court raised at  
17 the hearing last week. I'm happy to answer any questions.

18           THE COURT: Okay, thank you. No questions at this  
19 time.

20           Let me hear -- Ms. Sarkessian, anything? Nothing  
21 from the U.S. Trustee?

22           Then I'm going to turn to -- I received a letter  
23 from Mr. Finger, who represents the media parties, who had a  
24 conflict with another hearing downstate today and he asked to  
25 participate by video conference. And since he's only

1 participating in the status conference portion of this, which  
2 according to my chambers procedures can be done virtually, I  
3 gave him permission to appear virtually. So, with that -- I  
4 just want to make sure that everyone understands why I'm  
5 doing that.

6 MS. SARKESSIAN: Yes, Your Honor, Juliet  
7 Sarkessian for the U.S. Trustee. I guess the only question I  
8 would -- I appreciate the explanation debtors' counsel has  
9 provided on these issues, the only question I would have is  
10 what they're proposing with respect to the links for the  
11 Court. I don't know if that's satisfactory to the Court or  
12 the Clerk's Office, but as far as being provided to the U.S.  
13 Trustee -- I mean, I'm willing to try it, hopefully that that  
14 will work, but I don't know if that's -- in terms of what the  
15 Court record is for the creditor matrix, whether having those  
16 links are sufficient or whether something more is needed --  
17 or different is needed.

18 THE COURT: Yeah, I might need to discuss that  
19 with the Clerk's Office to see the best way to handle that.  
20 A hundred and fifty thousand page PDF is a bit too much, I  
21 think, but I'll check with the Clerk and see what  
22 recommendation they can make about how to deal with that.

23 MS. SARKESSIAN: Thank you, Your Honor.

24 THE COURT: I appreciate you pointing that out.

25 Mr. Finger, are you on the line?

1 (No verbal response)

2 THE COURT: He's not on the line, okay.

3 On the issue Mr. Glueckstein raised about the  
4 requirement for the debtor to go out and scour social media  
5 to see whether or not some customer has self-identified, I  
6 think that is a bridge too far. I don't think you need to  
7 undertake that as a part of your obligation to disclose these  
8 names. If someone self-identifies on the record by filing  
9 something on the docket, that's obviously a different story,  
10 but I'm not going to make you scour through millions of  
11 Tweets and whatever else is out there to see if you can find  
12 people who self-identified as a customer of FTX.

13 MR. GLUECKSTIEN: Thank you, Your Honor, I  
14 appreciate that clarification. And with respect to the  
15 creditor matrix, we're happy to speak with the Clerk's Office  
16 and make sure they understand what we're proposing and that  
17 it works for the Court. And if there are other solutions,  
18 we're happy to do them, but it's simply up -- it's just a  
19 practical issue given the volume here we're talking about of  
20 what's effectively 9.7 million rows that, you know, can't be  
21 just exported to a PDF.

22 THE COURT: Yes, I understand.

23 MR. GLUECKSTIEN: Thank you, Your Honor.

24 THE COURT: Okay, thank you.

25 Anything else before we adjourn?

1 MR. LANDIS: Your Honor, for the record, Adam  
2 Landis from Landis Rath & Cobb. We have uploaded to chambers  
3 the form of order for the Sullivan & Cromwell retention --

4 THE COURT: Okay.

5 MR. LANDIS: -- in a form that's acceptable to the  
6 parties.

7 THE COURT: All right, we'll get that entered  
8 right away.

9 All right, thank you all very much. We're  
10 adjourned.

11 COUNSEL: Thank you, Your Honor.

12 (Proceedings adjourned at 12:10 p.m.)  
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25

CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ Tracey J. Williams

January 20, 2023

Tracey J. Williams, CET-914

Certified Court Transcriptionist

For Reliable

/s/ Mary Zajackowski

January 20, 2023

Mary Zajackowski, CET-531

Certified Court Transcriptionist

For Reliable

**EXHIBIT 2**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE: Chapter 11  
MALLINCKRODT PLC, et al., Case No. 20-12522 (JTD)  
Courtroom No. 5  
824 North Market Street  
Wilmington, Delaware 19801  
Debtors. Monday, November 22, 2021  
3:00 P.M.

TRANSCRIPT OF HEARING  
BEFORE THE HONORABLE JOHN T. DORSEY  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors: Michael Merchant, Esquire  
RICHARDS, LAYTON & FINGER LLP  
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- and -

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Proceedings recorded by electronic sound recording,  
transcript produced by transcription service.



1 been quite active. We asked for two hours to the debtors'  
2 five, so that the time could be split between me and Mr.  
3 Ciardi. The debtors didn't want to agree to that, but as  
4 Your Honor is thinking about the order, we would like to get  
5 closure on that.

6 I wanted to agree with the debtors that we could  
7 wait until the end of the evidence to measure that, but I  
8 don't think at this stage in this 13-month proceeding, that  
9 two hours is unreasonable. Thank you.

10 THE COURT: Ms. Marks?

11 MS. MARKS: Your Honor, we believe that this  
12 should be addressed at the end of evidence. There are a lot  
13 of objecting parties in this case. They may not all want to  
14 put on evidence, but there are parties who want to make legal  
15 arguments and it just seems like a better idea. Let's  
16 address this when the evidence is closed, we see where we  
17 are, we see how long it's been, and everyone knows what  
18 evidence has been put in. I don't think we need to decide  
19 today.

20 THE COURT: I agree. We'll decide it at the end  
21 of evidence.

22 All right. Anything else on pretrial?

23 (No verbal response)

24 THE COURT: Okay. So, we'll go into the ruling on  
25 the motion to appoint an examiner and to designate ballots.

1 The Ad Hoc Acthar Group moved for an order directing the  
2 appointment of an examiner and to designate ballots. While  
3 the precise grounds for the motion are less than clear, the  
4 ad hoc group appears to identify three areas that it believes  
5 requires investigation by an examiner: one, the propriety of  
6 certain asbestos claims and the ballots cast with respect to  
7 those claims; two, the propriety of a settlement with the  
8 asbestos claimants; and three, the need for re-solicitation  
9 of the debtors' plan.

10 The motion also seeks to have the ballots of all  
11 asbestos claimants designated, pursuant to Section 1126(e) of  
12 the Code.

13 The debtors, the UCC, and the OCC oppose the  
14 motion. They argue that an examiner is neither necessary,  
15 nor appropriate under the circumstances of this case, and  
16 that designation of any votes is inappropriate.

17 For the reasons I'll explain, the motion is  
18 denied. On the appointment of an examiner, Section 1104(c)  
19 of the Bankruptcy Code says that:

20 "The Court shall order the appointment of an  
21 examiner to conduct such an investigation of the debtor as is  
22 appropriate if: one, such appointment is in the interests of  
23 creditors, any equity security holders and other interests of  
24 the estate; or two, the debtors' fixed, liquidated, unsecured  
25 debts exceed \$5 million."

1           That's 11 U.S.C. Section 1104(c).

2           While there is some debate among courts outside of  
3 Delaware regarding whether Section 1104(c) mandates the  
4 appointment of an examiner, in any case where the five-  
5 million-dollar debt threshold is met, this Court has  
6 repeatedly held that Section 1104(c)'s inclusion of the  
7 phrase "as is appropriate" gives the Court discretion. See  
8 Spanion, 526 B.R. 114,128 (Bankr. D. Del. 2010); In Re  
9 Visteon Corporation, 09-11786, (Bankr. D. Del. May 12, 2010),  
10 hearing transcript at 170, lines 16 through 20; In re  
11 Washington Mutual, Inc., 08-12229 (Bankr. D. Del. May 5,  
12 2010), hearing transcript 97, 10 through 13.

13           I see no reason to depart from these rulings here.  
14 As the moving party, the ad hoc group bears the burden to  
15 demonstrate that an examiner is appropriate under the  
16 circumstances of this case. See In re Allied Nevada Gold,  
17 15-10503 (Bankr. D. Del. September 11, 2015), hearing  
18 transcript at 90 to 91.

19           It has not done so. The ad hoc group's first  
20 argument is that an examiner is needed to determine whether  
21 the amendments made to the plan after solicitation were  
22 significantly material in nature to require re-solicitation  
23 of the plan. The ad hoc group does not explain why the Court  
24 cannot adequately address this issue, as it is a simple  
25 question of law that the parties will be free to argue during

1 confirmation, and which I can resolve in connection with  
2 confirmation. As all the relevant facts on this issue are  
3 already known, appointing an examiner to further investigate  
4 this issue would be inappropriate.

5           The ad hoc group next used that an examiner is  
6 needed to investigate the debtors and the UCC settlement with  
7 the asbestos claims for \$18 million, which they assert is  
8 more than any other litigation creditor group and they argue  
9 more than the asbestos claimants would receive if the general  
10 unsecured trusts were allocated on a proportional basis.  
11 They argue that since the settlement was announced, the  
12 debtors and the UCC have been avoiding discovery into the  
13 settlement and allocation of proceeds and that, quote:

14           "Only an independent examiner can force the  
15 discovery that is needed to sort of through the morass of  
16 potential conflicts of interest and issues surrounding the  
17 UCC settlement."

18           I disagree. The Court is given broad discretion  
19 to handle discovery disputes and to fashion remedies for  
20 violations of discovery rules and procedures. To the extent  
21 the ad hoc group believes the debtors or the UCC are not  
22 complying with those rules, they are free to file a motion to  
23 compel.

24           Further, the matter of whether a settlement with  
25 the UCC or any allocation in connection with that settlement

1 is appropriate is a matter to be considered at confirmation.  
2 The ad hoc group is free to raise it then in the form of a  
3 confirmation objection. Appointing an examiner to explore  
4 this issue would, therefore, also be inappropriate.

5           Lastly, the ad hoc group argues that an examiner  
6 is necessary to investigate the propriety of certain asbestos  
7 claims and the ballots cast with respect to those claims.  
8 This issue involves the conduct of counsel to one of the  
9 members of the Unsecured Creditors Committee, attorney Thomas  
10 Bevan, who is the subject of a recent opinion issued by  
11 another member of this Court, Judge Silverstein, in the  
12 Imerys bankruptcy case, Case Number 19-10289.

13           In that case, Judge Silverstein was presented with  
14 a motion by Mr. Bevan's firm, Bevan & Associates, to change  
15 its vote on the plan, pursuant to Bankruptcy Rule 3018.  
16 Following a hearing on the motion, Judge Silverstein denied  
17 Mr. Bevan's request to change his votes and held that the  
18 master ballot he filed would, instead, be considered  
19 withdrawn because, quote:

20           "The evidence raises significant questions as to  
21 whether any of Bevan & Associates' clients have a claim  
22 against any debtor."

23           She went on to state:

24           "What is crystal clear is that, one, Bevan &  
25 Associates has a database of clients built up over the past

1 30 years; two, prior to voting, Bevan & Associates performed  
2 zero diligence to discern which of its clients, if any, had  
3 been exposed to talc, much less to debtors' talc; and, three,  
4 Bevan & Associates submitted this master ballot, without  
5 regard to whether any of its 15,713 clients had a talc  
6 personal injury claim, as required to vote on the plan. In  
7 other words, Bevan & Associates simply printed out its list  
8 of clients in an Excel spreadsheet format and slapped it  
9 behind the master ballot."

10 Judge Silverstein then discussed the use of master  
11 ballots, generally, which she observed has become commonplace  
12 in mass-tort bankruptcies. Expressly noting that she was not  
13 commenting on whether master ballots should be commonplace,  
14 she stated, quote:

15 "In order for master ballots to work, great trust  
16 is placed in the Plaintiff's bar. With respect to Bevan &  
17 Associates, the evidence shows that such trust was not well-  
18 placed. It is true that direct talc personal injury claims  
19 will be channeled to a trust for liquidation, but a lawyer  
20 filing the master ballot still has the obligation to ensure  
21 that he only votes on behalf of clients who have a claim  
22 against the debtors."

23 That's In re Imerys Talc, Inc., 2021 Bankr. LEXIS  
24 2852, \*2728, (Bankr. D. Del. October 13, 2021).

25 The ad hoc group argues that discovery in this

1 case has revealed that Mr. Bevan undertook the same process  
2 in submitting master ballots here as it did in Imerys.  
3 Specifically, the ad hoc group cites to Mr. Bevan's  
4 deposition, which he states that he submitted a master ballot  
5 on behalf of his entire client group; the same, roughly,  
6 15,000 claimants as in the Imerys case, without conducting  
7 any inquiry into whether those clients, in fact, held claims  
8 against the debtors.

9           The debtors argue that there is a significant  
10 difference between the facts in Imerys and the facts in this  
11 case, with the main one being that in Imerys, there was no  
12 bar date for asbestos claims, and so there were no proofs of  
13 claim filed. Here, by contrast, every vote was connected  
14 back to a timely filed proof of claim.

15           No objections to the asbestos proofs of claim were  
16 filed prior to the voting deadline. The debtors assert that  
17 they did not have any obligation to inquire into the validity  
18 of the claims, prior to the voting deadline. They argue that  
19 the claims are only being allowed at the present time for  
20 voting purposes and that the validity of the claims and  
21 whether claimants are entitled to payment are both still  
22 undetermined.

23           I agree. At this stage in the proceedings, the  
24 only inquiry that was necessary for the debtors to conduct  
25 was whether the votes cast were cast on behalf of people or

1 entities that held claims. As Judge Silverstein acknowledged  
2 in Imerys, when proofs of claim are filed and no objections  
3 have been made, holders of those claims are entitled to vote,  
4 Imerys, 2021 Lexis 2852, \*29, Footnote 95, citing 11 U.S.C.  
5 Section 1126(a).

6           The ad hoc group argues, however, that because  
7 many of their claims were held to be invalid, as  
8 unsubstantiated, that the same standard should apply to the  
9 asbestos claims, which they assert are also unsubstantiated.  
10 While it is true that the validity or invalidity, as the case  
11 may be, of some claims has been determined in this case,  
12 there's no requirement that the debtors determine the  
13 validity of all claims by the time the voting takes place.

14           There remains time for the validity of all the  
15 asbestos claims to be determined. The ad hoc group has since  
16 filed objections to the Bevan claims; however, that objection  
17 was well past the voting deadline.

18           Appointing an examiner here would be inappropriate  
19 and the request could fairly be denied for that reason alone;  
20 however, it is also worth noting that appointing an examiner  
21 to investigate these matters would be improper for the  
22 additional reason that Section 1104(c) very clearly provides  
23 for the appointment of an examiner to conduct an  
24 investigation of the debtor.

25           While the ad hoc group goes to great lengths to



1 attempt to connect the complaint of conduct back to the  
2 debtors, what it is really concerned with is the conduct of  
3 counsel to a member of a creditors' committee member.  
4 Accordingly, appointing an examiner under 1104(c) to  
5 investigate those concerns would not be appropriate.

6 For all of these reasons, the motion to appoint an  
7 examiner is denied.

8 I turn now to the motion request for an order  
9 designating and striking all ballots submitted by asbestos  
10 claimants, pursuant to Section 1126(e) of the Code. Section  
11 1126(e) provides that the Court may, quote:

12 "May designate any entity whose acceptance or  
13 rejection of a plan was not in good faith or was not  
14 solicited or procured in good faith or in accordance with the  
15 provisions of this title."

16 As Judge Silverstein stated in Imerys, quote:

17 "Designating a vote is a drastic entity and the  
18 burden on the movant is a heavy one."

19 That's 2021 Bankr. LEXIS 2852, \*37.

20 She went on to explain that, quote:

21 "Over the years, courts have developed several  
22 badges of bad faith," that might just justify  
23 disqualification, including, quote:

24 "Creditor votes designed to, one, assume control  
25 of the debtor; two, put the debtor out of business or

**EXHIBIT 3**

NITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE: Chapter 11  
Case No. 22-11068 (JTD)  
FTX TRADING LTD., et al.,  
Courtroom No. 5  
824 Market Street  
Debtors. Wilmington, Delaware 19801  
Wednesday, January 11, 2023  
9:00 a.m.

TRANSCRIPT OF HEARING  
BEFORE THE HONORABLE JOHN T. DORSEY  
CHIEF UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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1 (Proceedings commence at 9:03 a.m.)

2 (Call to order of the Court)

3 THE COURT: Good morning, everyone. Thank you.  
4 Please be seated.

5 So, before we begin, let me just remind everyone  
6 about proper decorum, both in the courtroom and for those who  
7 are appearing online through the Zoom call. It's important  
8 that we maintain proper courtroom decorum.

9 If you are on the Zoom call, please leave your  
10 camera off and your line muted, unless you wish to be heard  
11 regarding one of the matters that are before the Court today.  
12 And disruptions won't be tolerated; anyone disrupting on the  
13 Zoom call will be removed immediately and not allowed back  
14 in.

15 Before we begin, I also want to address -- excuse  
16 me -- a letter that I received from four U.S. Senators. It's  
17 an inappropriate *ex parte* communication, number one. And  
18 number two, I want to make perfectly clear that I will make  
19 my decisions on the matters referred to in the letter based  
20 only upon admissible evidence and the arguments of parties-  
21 in-interest presented in open court.

22 I'm not going to docket -- I am going to docket the  
23 letter; in fact, I did that this morning. But it will have  
24 no impact whatsoever in my decisions in this case, which will  
25 only be based upon the facts and law presented by the

1 parties.

2 So, with that, we'll proceed.

3 MR. LANDIS: Good morning, Your Honor, and may it  
4 please the Court. Adam Landis from Landis, Rath & Cobb,  
5 counsel to FTX Trading Limited and its affiliated debtors.

6 We're here today, Your Honor, on second-day relief.  
7 We filed an amended agenda. It's 27 pages long, Your Honor,  
8 with 30 items on it. But thanks to the very hard work of  
9 many people in this room and lots of people out of it, I'm  
10 pleased to say that we have a limited number of matters that  
11 Your Honor is going to have to hear and decide today.

12 But before we get into the agenda, I'd like to cede  
13 the podium to Mr. Dietderich, who will give the Court and  
14 parties-in-interest an update as to activities that have been  
15 going on since we were last before you.

16 THE COURT: All right. Thank you.

17 MR. DIETDERICH: Thank you, Mr. Landis.

18 Good morning, Your Honor. May it please the Court,  
19 I have a short case update for the record.

20 The debtors filed for Chapter 11 60 days ago and  
21 the level of activity since has been extraordinary. We've  
22 identified over 9 million customer accounts with about 120  
23 billion in associated transactions. We are engaged in a  
24 complex effort now to recreate petition date claim values for  
25 every customer.



1           We are building financial statements from the  
2 ground up using the general ledger and bank transaction  
3 records, rather than the previous incomplete and unreliable  
4 financial statements of the debtors. This will put us in the  
5 position to describe the financial results of the debtors  
6 accurately for the first time.

7           We have located over \$5 billion of cash, liquid  
8 cryptocurrency, and liquid investment securities, measured at  
9 petition date value. This does not describe any value to  
10 holdings of dozens of illiquid cryptocurrency tokens, where  
11 our holdings are so large relative to the total supply that  
12 our positions cannot be sold without substantially affecting  
13 the market for the token.

14           The 5 billion in liquid assets also does not  
15 include approximately 425 million of crypto at petition date  
16 values in the custody of the Securities Commission of the  
17 Bahamas. That position was valued at about 170 million at  
18 the end of 2020. It contains a large amount of FTT and is  
19 highly volatile.

20           We have started a strategic review process for our  
21 assets. We have established data rooms and solicited  
22 interest for the four operating subsidiaries subjecting to  
23 the bidding procedures motion today.

24           We also are well underway on plans to monetize over  
25 300 other nonstrategic investments with a book value of over

1 \$4.6 billion.

2 We have established, Your Honor, cooperative  
3 relationships with the joint provisional liquidators in our  
4 only subsidiaries that are subject to separate proceedings,  
5 Australia and the Bahamas.

6 Our recently announced cooperation agreement with  
7 the JPL in the Bahamas is an important first step to align  
8 incentives and maximize joint recoveries. The principle of  
9 that agreement is simple: It does not matter who collects a  
10 dollar for customers, as long as the customers get it.

11 We've established a task force with the Official  
12 Committee of Creditors and the Bahamas JPL to explore  
13 alternatives for the sale or reorganization of the  
14 international platform.

15 We have cooperated and spent countless hours  
16 providing information to law enforcement.

17 These 60 days have already seen Mr. Bankman-Fried  
18 indicted, arrested, extradited, released on bail, and plead  
19 not guilty, with a trial date set.

20 We have seen Ms. Ellison and Mr. Wang plead guilty,  
21 make public plea statements, and cooperate with law  
22 enforcement.

23 And we have learned about what happened. We know  
24 how Sam Bankman-Fried instructed Gary Wang to create the  
25 Alameda backdoor, a secret way for Alameda to borrow from

1 customers on the exchange without permission. Mr. Wang  
2 created this backdoor by inserting a single number into  
3 millions of lines of code for the exchange, creating a line  
4 of credit from customers to Alameda, to which customers did  
5 not consent. And we know the size of that line of credit, it  
6 was \$65 billion.

7 We know what Alameda did with the money. It bought  
8 planes, houses, threw parties, made political donations. It  
9 made personal loans to its founders. It sponsored the FTX  
10 Arena in Miami, a Formula One team, the League of Legends,  
11 Coachella, and many other businesses, events, and  
12 personalities.

13 It gambled on cryptocurrency investments, often  
14 unsuccessfully. And it made debt and equity investments in  
15 diverse businesses, many at prices that greatly exceeded  
16 market value at the time of the investment.

17 We know that all this has left a shortfall in value  
18 to repay customers and creditors. The amount of the  
19 shortfall is not yet clear. It will depend on the size of  
20 the claims pool and our recovery efforts. But every week, we  
21 come closer to completing the work necessary to estimate  
22 recoveries for the purposes of a plan of reorganization.

23 We also have begun to engage on the central legal  
24 issues in the case. These include the nature of customer  
25 entitlements, are they property or claims, and how to close

1 out derivatives to calculate petition date claim amounts.

2 Finally, we have established great working  
3 relationships with the U.S. Trustee, our new Official  
4 Committee of Creditors -- welcome -- and regulatory  
5 stakeholders around the world. Many people and many  
6 institutions have worked hard to get us here today. Chapter  
7 11 is a fish bowl and we welcome that, in this case more than  
8 most.

9 And as a result of the effort by so many, we stand  
10 before you with only limited open issue on our second-day  
11 relief. This is despite the volume and the unique nature of  
12 many of the issues everyone has faced together.

13 Unless you have questions for me, Your Honor, I  
14 propose we move directly to the agenda. As Mr. Landis  
15 mentioned, it is an extremely long agenda, but it is mostly  
16 matters that have either been adjourned or reflected in  
17 orders that have been either entered or in agreed form.

18 For our point today, Your Honor -- maybe -- I'll  
19 cede -- also, Mr. Hansen is raising his hand. I'll cede the  
20 podium to him, if he would like to make some preliminary  
21 remarks.

22 THE COURT: Okay. Thank you.

23 Mr. Hansen.

24 MR. HANSEN: Good morning, Your Honor. Kris Hansen  
25 with Paul Hastings, proposed counsel to the official

1 committee. Just quick introductions. My partners Erez Gilad  
2 and Gabe Sasson are here with me today, as are Mr. Lunn and  
3 Mr. Poppiti, with our proposed co-counsel at Young Conaway.

4 The committee has also selected FTI Consulting as  
5 it's financial advisor and Jefferies as its investment  
6 banker.

7 Your Honor, the committee worked very hard behind  
8 the scenes with the debtors and the United States Trustee to  
9 try to make this hearing as consensual as it could be, and we  
10 appreciate the willingness of both parties to approach the  
11 motions on for today in a constructive manner.

12 With this being the committee's first formal  
13 appearance before the Court since its formation, I wanted to  
14 just take a moment to share a little bit of information about  
15 the committee and provide the Court with the committee's  
16 perspective on the cases at this time, if that would be okay.

17 THE COURT: That's fine. Thank you.

18 MR. HANSEN: Thank you, Your Honor.

19 Your Honor, first, the committee is comprised of  
20 nine members, including three individuals and six entities  
21 from eight different jurisdictions, spanning from Singapore  
22 to California. The committee members have broad exposure  
23 across the FTX exchange platforms and, sadly, share the  
24 moniker of "victim" with the millions of other customers who  
25 were defrauded by FTX.

1           The committee members understand the seriousness of  
2 their task to serve as fiduciaries for all creditors in these  
3 cases. And to that end, they will check the debtors at every  
4 step of these cases and take independent actions and generate  
5 their own initiatives to recover assets and maximize the  
6 distribution to creditors as rapidly as they can.

7           To date, the committee members have been active,  
8 engaged, and hard at work with the committee professionals in  
9 helping to resolve near-term issues, inserting itself in the  
10 investigation and asset tracing efforts that are underway by  
11 the debtors, and pushing the analysis of larger issues, such  
12 as whether the exchanges can be restarted and a restructuring  
13 path can be pursued as a complement to the asset recovery,  
14 monetization, and distribution efforts. And it's important  
15 to note that it's not too soon to start that exercise.

16           The committee also believes strongly in the  
17 principles noted at the outset of our reservation of rights  
18 on the debtors' motion to approve the bidding procedures.  
19 These cases need to be transparent, credibility needs to be  
20 restored, and creditors need to know that they can trust the  
21 Chapter 11 process.

22           As part of this effort, the committee is preparing  
23 a multifaceted approach for communicating with the global  
24 creditor community in these cases, which will include  
25 dissemination of information, not only through the standard

1 committee website, but through various forms of social media.  
2 The committee is aware of the disappointment of customers and  
3 creditors with the information-sharing efforts in some of the  
4 large, crypto-related cases, and we're trying to learn from  
5 that to do better here.

6           The magnitude and complexity of the global fraud  
7 and the lack of the corporate controls and recordkeeping  
8 present significant challenges to the realization of the  
9 committee's objectives, but the committee will work  
10 tirelessly to make its goals a reality.

11           We appreciate the few minutes, Your Honor, and the  
12 committee looks forward to working through these cases with  
13 you, the United States Trustee, the Department of Justice,  
14 the Bahamian liquidators, and the other parties-in-interest.  
15 And you'll hear more from us as we go through each motion  
16 today.

17           Do you have any questions for me, Your Honor?

18           THE COURT: No, no questions. Thank you very much.  
19 Appreciate the --

20           MR. HANSEN: Thank you.

21           THE COURT: -- introductions and the update.

22           I may institute something that I did during the  
23 Mallinckrodt bankruptcy, when I have dozen-page agendas with  
24 a lot of items that are moved off. I know the local rule  
25 says you have to list everything in them. What I did in

1 Mallinckrodt was say, if an item has been adjourned or has  
2 been resolved -- well, if it's been adjourned, specifically,  
3 you don't have to list everything out in that. Just put in  
4 the motion and that it's been adjourned to a different date.

5 MR. LANDIS: Thank you, Your Honor. For the  
6 record, Adam Landis. I see that you're directing that at me,  
7 and we will --

8 THE COURT: Yes.

9 MR. LANDIS: -- absolutely take our cues from what  
10 we were involved with in Mallinckrodt.

11 And I also would be remiss if I didn't extend some  
12 appreciation to chambers for the patience with which everyone  
13 has dealt with us as we've tried to get matters --

14 THE COURT: Sure.

15 MR. LANDIS: -- on the agenda. So thank you for  
16 that and we will take that advice.

17 THE COURT: All right. Thank you. Okay.

18 MS. KRANZLEY: Thank you, Your Honor. Good  
19 morning. For the record, Alexa Kranzley from Sullivan &  
20 Cromwell, proposed counsel for the debtors.

21 Your Honor, if acceptable to you, I will cover the  
22 matters that are listed on the agenda that have been  
23 resolved, so I'll go slightly out of order.

24 THE COURT: Okay.

25 MS. KRANZLEY: I'll start with Item Number 19 on



1 the agenda.

2 THE COURT: Well, let me interrupt you first, Ms.  
3 Kranzley. I did see the three additional COCs this morning,  
4 and I did enter those right before I came on the bench --

5 MS. KRANZLEY: Oh --

6 THE COURT: -- so those are entered, as well.

7 MS. KRANZLEY: Great. So then I think I only have  
8 one agenda item to address with you, which is Item Number 25  
9 and 26, which is actually the motion of North American League  
10 of Legends to compel rejection or, in the alternative, relief  
11 from the automatic stay to terminate the sponsorship  
12 agreement.

13 Your Honor, while this is a third-party motion, the  
14 debtors had filed a motion to reject contracts on December  
15 30th at Docket Number 333, which includes the sponsorship  
16 agreement that's the subject of this. We have been working  
17 with the counterparties. We have an agreed-to stipulation.  
18 And I understand from counsel that there will -- they will be  
19 filing a certification of counsel with the stipulation later  
20 today.

21 THE COURT: Okay. I remember that from the last  
22 hearing.

23 MS. KRANZLEY: Yes.

24 THE COURT: Yeah.

25 MS. KRANZLEY: So I think, with that, I'll hand the

1 podium to Mr. Glueckstein.

2 THE COURT: Okay. Thank you.

3 MR. GLUECKSTEIN: Good morning, Your Honor.

4 THE COURT: Good morning.

5 MR. GLUECKSTEIN: Brian Glueckstein, Sullivan &  
6 Cromwell, on behalf of the debtors.

7 Your Honor, the first contested matter on the  
8 agenda today is listed at Agenda Item Number 20, which is the  
9 debtors' motion for final relief, asking the Court to  
10 authorize consolidated creditor matrix and to redact certain  
11 customer and creditor information.

12 Your Honor, we filed a declaration at Docket Number  
13 411, the declaration of Kevin Cofsky, in support of the  
14 relief requested today. Mr. Cofsky is here in the courtroom  
15 and available. We would like to admit Mr. Cofsky's  
16 declaration into evidence in support of this motion at this  
17 time.

18 THE COURT: Okay. Is there any objection?

19 MR. FINGER: Yes, Your Honor.

20 THE COURT: Step forward.

21 MR. FINGER: Good morning, Your Honor.

22 THE COURT: Good morning.

23 MR. FINGER: David Finger for the media objectors.

24 Actually, I was going to file -- I was going to ask  
25 -- request -- make a motion to strike Mr. Cofsky's

1 declaration. I'm not sure if he's testifying as a fact  
2 witness, which I don't think he is, but to the extent he is,  
3 there's no indication that he has firsthand knowledge of the  
4 matters about which he's testifying. And if he's testifying  
5 as an expert, he has not established his expertise. There is  
6 nothing indicating that he has any experience in the  
7 cryptocurrency market.

8 He testifies at a couple of paragraphs, Paragraph 7  
9 and 8, of his "understanding," in quotes, but does not  
10 identify the source of his understanding, so that the Court  
11 can determine the credibility of those understandings.

12 He also testifies repeatedly as to his "belief,"  
13 again in quotes, as to certain conclusions. That's in  
14 Paragraphs 8, 9, 11, and 13. He does not offer any objective  
15 support for his subjective belief.

16 Now the U.S. Supreme Court in --

17 THE COURT: Hold on one second, Mr. Finger. I  
18 don't know if we're -- can we -- he -- it's kind of -- I  
19 don't know if the people in the back of the courtroom can  
20 hear. I think those microphones needs to be turned up maybe  
21 a little bit.

22 MR. FINGER: I can try to talk louder.

23 THE COURT: Or you can lift them. And talking  
24 louder would be helpful, too, yes.

25 MR. FINGER: All right. The Supreme Court in

1 Daubert said, to satisfy the requirement of specialized  
2 knowledge to qualify as an expert, there must be more than a  
3 subjective belief or unsupported speculation.

4 As Mr. Cofsky did not provide support for his  
5 beliefs and understandings, he does not meet the requirements  
6 for an expert and his declaration should, therefore, be  
7 stricken.

8 THE COURT: All right. Mr. Glueckstein?

9 MS. SARKESSIAN: Your Honor, I have a similar  
10 objection.

11 THE COURT: Oh, go ahead --

12 MS. SARKESSIAN: Could I --

13 THE COURT: -- Ms. Sarkessian.

14 MS. SARKESSIAN: Thank you, Your Honor. If it  
15 pleases the Court, Juliet Sarkessian on behalf of the U.S.  
16 Trustee.

17 I thought it might make sense for me to --

18 THE COURT: Yes.

19 MS. SARKESSIAN: -- give my objection now, so that  
20 debtors' counsel can address everything at the same time.

21 So, in -- I -- first of all, the U.S. Trustee does  
22 agree that some of the testimony in Mr. Cofsky's declaration  
23 appears to be of the nature of an expert witness and his  
24 expertise in this area has not been established.

25 And in particular, in paragraph -- well, I have

1 questions to ask Mr. Cofsky about the statements in Paragraph  
2 7 of his declaration, depending -- as to whether that's based  
3 on personal knowledge. So, depending on his answers, I may  
4 object to that.

5 But with respect to Paragraph 11, he has statements  
6 like "it is common knowledge."

7 And then later in the paragraph:

8 "-- potential buyers of the debtors' assets will  
9 likely ascribe material value to the debtors' customer lists"

10 That's speculation.

11 And then I also object, in Paragraph 12, at the  
12 end, he cites a valuation expert that is somebody other than  
13 himself and quotes out of, I guess it's a book. So we object  
14 to that as hearsay.

15 And again, I do have some questions with respect to  
16 some of the information in Paragraph 7, to determine if  
17 that's based on his personal knowledge, and then I also have  
18 cross-examination for the witness, as well.

19 THE COURT: All right.

20 MS. SARKESSIAN: Thank you, Your Honor.

21 THE COURT: Any other objections?

22 (No verbal response)

23 THE COURT: All right. Mr. Glueckstein. I'll tell  
24 you up front, Mr. Glueckstein. If I have an objection to the  
25 admissibility of a declaration, I usually just allow -- or

1 require that the witness just testify live, and maybe we can  
2 resolve some of these issues by testimony. But go ahead, if  
3 you have anything else.

4 MR. GLUECKSTEIN: That's fine, Your Honor. Mr.  
5 Cofsky is the debtors' proposed investment banker. He's  
6 offering his opinions in the declaration with respect to  
7 matters that are raised by the motion today. We think it is  
8 admissible.

9 But if it's Your Honor's preference, I'm happy to  
10 call Mr. Cofsky and walk through the issues in his  
11 declaration live.

12 THE COURT: All right. Let's do that. Let's call  
13 Mr. Cofsky to the stand and we'll do it live and deal with  
14 any objections as they come.

15 (Participants confer)

16 THE COURT: Mr. Cofsky, please take the stand and  
17 remain standing for the oath.

18 THE COURT OFFICER: Please raise your right hand.  
19 Please state your full name and spell your last name for the  
20 Court.

21 THE WITNESS: Kevin Michael Cofsky, C-o-f-s-k-y.  
22 KEVIN COFSKY, WITNESS FOR THE DEBTORS, AFFIRMED

23 THE COURT OFFICER: You may be seated.

24 MR. GLUECKSTEIN: Your Honor, may I approach the  
25 witness and give him a copy of his declaration?

1 THE COURT: Yes. Could you hand me --

2 MR. GLUECKSTEIN: Yes.

3 THE COURT: I can't seem to find it. I usually  
4 have these things --

5 MR. GLUECKSTEIN: I --

6 THE COURT: -- electronically, but I can't --

7 MR. GLUECKSTEIN: I have --

8 THE COURT: -- find it.

9 MR. GLUECKSTEIN: -- a copy for you, as well, Your  
10 Honor.

11 THE COURT: Okay. Thank you. Thank you.

12 DIRECT EXAMINATION

13 BY MR. GLUECKSTEIN:

14 Q Good morning, Mr. Cofsky.

15 A Good morning.

16 Q Mr. Cofsky, can you provide a little bit of background  
17 about your experience to the Court this morning?

18 A Yes. Would you like me to go through education or --

19 Q Just a little --

20 A -- professional --

21 Q -- bit about --

22 A -- experience?

23 Q -- your work experience and qualifications in the --  
24 yeah, in the area and scope in which you are performing  
25 services for the debtors.

1 THE COURT: Mr. Cofsky, can you please move the  
2 microphone closer to you, so we can --

3 THE WITNESS: Yes, sir.

4 THE COURT: -- make sure we hear you? Thank you.

5 THE WITNESS: I studied finance at the Wharton  
6 School of Business as an undergraduate. I was a financial  
7 analyst at Houlihan Lokey for two years, from 1992 to 1994.

8 After law school and practicing law for a period of  
9 time, I returned to investment banking in 2001. I was with a  
10 firm called the Beacon Group, as well as Evercore Partners,  
11 where I was a managing director in the restructuring group.

12 I joined a small firm that merged into Perella  
13 Weinberg Partners upon its founding in 2006, and I have been  
14 with the firm since that time. I've been a partner with the  
15 firm since 2015.

16 BY MR. GLUECKSTEIN:

17 Q And can you describe for the Court just generally the  
18 scope of work which yourself and your colleagues at Perella  
19 are proposed to assist the debtors with in these cases?

20 A Yes. We are the proposed investment banker for the  
21 debtors. We've been working with the other professionals and  
22 with the management team and the board on a wide range of  
23 issues, including understanding the assets of the debtors,  
24 evaluating potential for reorganization of some of the  
25 businesses, as well as potential sales of the businesses.



1 And in general, our mandate is to explore different potential  
2 avenues to maximize the value of the debtors' assets through  
3 this process.

4 Q In your experience, Mr. Cofsky, have -- prior to this  
5 case, have you been involved in situations where the  
6 monetization of businesses includes the monetization of  
7 things such as customer assets or customer lists?

8 A Yes, I have been.

9 Q Can you elaborate on that at all, in terms of the types  
10 of work you've done in that area?

11 A Yes. Most recently, we've been involved in the Celsius  
12 bankruptcy case, pursuant to which the customer -- the value  
13 and the potential value of the customers has been at issue.  
14 But we've also seen -- while we are not running the sale  
15 process, we have been evaluating that. And we appreciate the  
16 extent to which potential acquirers of that business have  
17 evaluated the value of the customers and their various  
18 positions on that platform.

19 Q Are there other examples that you can recall where the  
20 question of customer assets or customer lists have been at  
21 issue in transactions that you or your team have been  
22 involved in, in the past?

23 A Yes. The -- the identity and value of customers are  
24 often considered to be quite valuable in the context of  
25 retail businesses, consumer-facing businesses --

1 MS. SARKESSIAN: Your Honor, I'm going to object.

2 THE COURT: Basis?

3 MS. SARKESSIAN: I think he's testifying about what  
4 potential buyers look for, and he does not have personal  
5 knowledge about that.

6 THE COURT: Well, he's an investment banker. He  
7 buys and sells companies, right?

8 MS. SARKESSIAN: I think, Your Honor, if he could  
9 be more specific about the basis of that knowledge and  
10 exactly who he's talking about.

11 THE COURT: Well, is that a foundation for his  
12 knowledge, Mr. Glueckstein?

13 BY MR. GLUECKSTEIN:

14 Q Mr. Cofsky, can you back up a half-step and explain to  
15 the Court your role in your transactions that you can recall  
16 that have involved customer assets in the past?

17 A Yes. I want to try to be specific because this is a  
18 unique situation. And I would refer most specifically to, in  
19 my declaration, I think, the other exchanges the other crypto  
20 companies and the extent to which they clearly have indicated  
21 that they value the identity of customers. And they have --  
22 all of the other crypto companies that we have evaluated have  
23 programs in place to compensate for the provision of that  
24 information.

25 We have also been a party to situations, as I indicated,

1 most recently in the Celsius case, where we have seen that  
2 bids have explicitly provided incremental value for each  
3 customer that is acquired.

4 Q Have you, Mr. Cofsky, considered as part of your work as  
5 proposed investment banker in this case the debtors' customer  
6 list that they have available to them here?

7 A I'm sorry. Can you repeat that question, please?

8 Q In the context of -- in the context of the work that  
9 you've done -- that you're doing as the debtors' proposed  
10 investment banker in this case, have you considered the  
11 debtors' customer list as part of the strategic review that  
12 you've undertaken?

13 A Yes, we have.

14 Q With respect to the ongoing strategic review, have you,  
15 as the debtors' investment banker, formed a view as to  
16 whether there is value in the debtors' customer list?

17 A Yes, we have, and we do believe that there's value in  
18 those assets.

19 Q And can you explain for the Court the basis for that  
20 conclusion?

21 A Yes. We believe that, whether the exchanges are  
22 reorganized or whether they are sold in connection with our  
23 process, both the exchanges that we're currently marketing,  
24 as well as the core business that we're currently evaluating,  
25 we believe that the value of the business is maintained and

1 maximized by ensuring that competitors are not able to  
2 solicit those customers and onboard them onto their platforms  
3 in a manner which would result in a reduction in the value of  
4 the estate.

5       So, for example, if other businesses that compete with  
6 FTX had the identity and were able to locate these customers,  
7 solicit them, put them on their platform while FTX is in  
8 bankruptcy and not currently operating in the ordinary  
9 course, that would reduce the value of the estate.

10       Whether the estate, ultimately, is able to reorganize  
11 its core business or whether third parties are evaluating the  
12 acquisition of those exchanges, they will place, in our view,  
13 a greater value on those exchanges if all of the customers  
14 are maintained on that platform and have not found another  
15 exchange on which to transact.

16 Q       Mr. Cofsky, with respect to -- we've been talking about  
17 the customer information, do you view it important to  
18 maintain, during your strategic review process, the anonymity  
19 of both names, in addition to contact information, or are  
20 contact information alone sufficient?

21 A       We -- it's a very good question and we -- we looked into  
22 that. We -- we reviewed the customer lists. There are a  
23 number of -- excuse me -- customers whose names are unique.  
24 And we were able to, very quickly, locate them through  
25 searches on social media, as well as other professional

1 relationship databases. And we came to the conclusion that  
2 it would be quite easy to locate, identify, and contact those  
3 customers, even starting with only the customer names. And  
4 that relates to individuals, as well as businesses.

5 Q Mr. Cofsky, if you could look at the declaration that  
6 you submitted in this case that's in front of you.

7 A Yes, I have it.

8 Q And it's filed at Docket Number 411, entitled:

9 "Declaration of Kevin M. Cofsky in Support of the  
10 Debtors' Motion for Entry of an Order Authorizing the Debtors  
11 to Redact or Withhold Certain Customer Information."

12 Mr. Cofsky, were you involved in preparing the  
13 declaration that was submitted to the Court at Docket Number  
14 411?

15 A I was.

16 Q And do you believe, to the best of your knowledge, that  
17 the information presented in that -- in your declaration  
18 reflects your views, again, to the best of your knowledge?

19 A Yes, I do.

20 Q Okay. If you can go to Paragraph 12 of your  
21 declaration. You state in the first sentence there:

22 "Additionally, it is well established that customer  
23 information such as names and contact information are  
24 separately valued intangible assets of an entity."

25 Do you see that?

1 A I do.

2 Q Can you explain to the Court the basis for the  
3 statements that you made there in Paragraph 12 and beyond  
4 that sentence in Paragraph 12?

5 A Yes. I'd answer that in a number of ways:

6 First, as indicated further in this particular  
7 paragraph, in the context of a "business combination," as  
8 that's designed by Accounting Standard Codification 805,  
9 intangible assets are valued and allocated in a certain  
10 manner, and customer-related assets, customer lists are a  
11 component of that. We thought that that was significant.

12 I also indicated in the paragraph, having reviewed some  
13 academic literature, the -- in particular, the book by  
14 Jeffrey Cohen, Intangible Assets: Valuation and Economic  
15 Benefit, again, the value ascribed to customer lists,  
16 particularly the economic value that is indicated  
17 particularly by instances where companies choose to keep that  
18 information secret, to the extent that they can.

19 In addition, as I had indicated in the prior paragraphs,  
20 it was very relevant, in our view, significant as we  
21 evaluated this particular situation and the landscape -- the  
22 competitive landscape within which this company operates,  
23 that all of its competitors value this information. This is  
24 a new and expanding field. And it's not entirely clear to  
25 businesses that are seeking to expand their asset base and

1 their customer list exactly who they should be targeting.

2 And so all of the competitors that we looked at  
3 indicated that they provide economic -- that they ascribe  
4 economic value to these customers. And the indication, the  
5 evidence of that was -- I won't read through the words on the  
6 page, but Binance and Coinbase and Kraken and Kucoin all  
7 provide financial incentives for the referral of customers  
8 and the retention of customers.

9 We also reviewed the bids that had been submitted in the  
10 Voyager case and in the Celsius case and took note of the  
11 fact that, not only were customer assets and lists being  
12 acquired in -- and a value ascribed to the business itself,  
13 but that there were actually incremental elements of value  
14 which would be allocated to each customer that went onto the  
15 acquirers platform. And in the initial case of the prior bid  
16 from FTX to Voyager, to the extent that customers maintained  
17 their accounts on the platform for a period of time, they  
18 would -- they would receive incremental value. And so there  
19 was specific value ascribed to each customer -- the name,  
20 the identity, the assets -- as they moved onto the platform  
21 of the buyer.

22 Q Thank you.

23 With respect, Mr. Cofsky, if you look at Paragraph 13 of  
24 your declaration, the last paragraph there.

25 A Yes.

1 Q You wrote in the declaration in the last sentence:

2 "I believe an important component of that strategy  
3 is maintaining the confidentiality of customers' identities  
4 and personal identifying information."

5 And then you end by saying:

6 "Disclosing those customer lists would therefore  
7 jeopardize the debtors' ability to maximize value."

8 Do you see that there?

9 A I do.

10 Q Do you stand by that testimony this morning?

11 A I do.

12 Q And can you elaborate for the Court your view as to why  
13 disclosing the customer lists would jeopardize the ability  
14 to maximize value?

15 A Yes. As I indicated, whether we reorganize, are able to  
16 reorganize the businesses, or whether there will be an  
17 acquisition of the core business and the other exchanges, we  
18 believe that the business itself is comprised of a number of  
19 components, and a significant component of the business is  
20 the customers themselves.

21 The customer assets are obviously important. But what  
22 the customers choose to do going forward will be a  
23 significant driver of value. And we think that third parties  
24 will place significant value on that in a sale process. So,  
25 to the extent that those customer lists, the identity of the



1 customers are able to be maintained without broad disclosure,  
2 that will give buyers confidence that what they are buying is  
3 actually of value, and that they alone will be able to  
4 maximize the value of putting those customers onto their  
5 platform.

6 I think the same logic holds for a reorganized entity.  
7 To the extent that the exchange is able to be rehabilitated  
8 and reorganized, it will, in our view, have more value if  
9 those customers have not been poached and are -- by  
10 competitors, and are, therefore, not transacting on another  
11 exchange.

12 Q Mr. Cofsky, Paragraph 6 of your declaration you  
13 submitted to the Court, if you'd turn there. It says -- you  
14 write in the first sentence:

15 "The debtors, with the assistance of PWP, have  
16 commenced an extensive outreach effort as part of marketing  
17 the debtors; businesses and assets for potential sale."

18 Do you see that?

19 A Yes, I do.

20 Q And that sentence is accurate --

21 A Yes.

22 Q -- correct?

23 A Yes, that's correct.

24 Q Do you have any sense, at this time, how long the  
25 process of outreach and monetization of assets and

1 reorganization is likely to take?

2 A We have filed the bidding procedures for the four  
3 exchanges, as you know, and have a time frame enumerated in  
4 the bidding procedures. We've had significant interest in  
5 those assets to date. We would expect that we will be in a  
6 position to evaluate those potential -- if the Court approves  
7 the bidding procedures and if we move forward with that  
8 process, we would be in a position to evaluate those bids  
9 relative to a standalone reorganization of those exchanges in  
10 a matter of months. I don't want to be too specific because  
11 we're at the earlier stages of that process and there's a lot  
12 of work that needs to be done.

13 Similarly, the core exchange, as the UCC counsel  
14 indicated earlier, it's not too soon, and we have already  
15 initiated a review of a reorganization of the core exchange  
16 and that process is ongoing. We, as you know, have not  
17 launched a sale process with respect to the core exchange,  
18 but we expect to run a simultaneous reorganization, as well  
19 as sale process for that exchange.

20 I -- it's difficult to say with too much  
21 specificity at this point, given the -- given the work that  
22 will need to be done and the collaboration with the UCC on --  
23 on the broader exchange process, the sale as well as the  
24 reorganization efforts. But I would expect that we'll be  
25 talking a matter of months before that type of a sale and

1 evaluation of a reorganization will be initiated robustly.

2 Q Thank you, Mr. Cofsky.

3 MR. GLUECKSTEIN: No further direct, Your Honor.

4 THE COURT: Okay. Thank you.

5 Cross.

6 MS. SARKESSIAN: Thank you, Your Honor. For the  
7 record, Juliet Sarkessian on behalf of the U.S. Trustee.

8 Your Honor, I just have a question, a  
9 clarification. Debtors' counsel asked the witness, you know,  
10 did you participate the declaration, is it true and correct  
11 to the best of your knowledge, information, and belief. I  
12 just want to be clear that the affidavit itself is not coming  
13 into evidence and it is only the witness' testimony that is  
14 coming into evidence.

15 THE COURT: That's correct.

16 MS. SARKESSIAN: Thank you.

17 CROSS-EXAMINATION

18 BY MS. SARKESSIAN:

19 Q Mr. Cofsky, you spoke about doing a search using just  
20 the names of a number of the debtors' customers to see if you  
21 could find other contact information based on their names,  
22 correct?

23 A Yes.

24 Q And by "contact information," I assume, you know, an  
25 email address, a street address, something -- telephone

1 number, something of that nature?

2 A Yes, as well as information on social media platforms  
3 and ability to identify the individual -- we believe identify  
4 the individuals and their interest in crypto.

5 Q And identify them in a way that you could communicate  
6 with them?

7 A Yes.

8 Q How many names did you do that search for?

9 A I directed my team to evaluate that. I believe, of the  
10 9 million customers, it was not close to 9 million, more than  
11 a dozen, dozens, I believe; enough that, once we had a  
12 sufficiently high probability of hit rate, we believed that  
13 was indicative of our ability to identify these customers.

14 Q So let me try to pinpoint this down. Are you saying a  
15 dozen, a few dozen? What's the correct number?

16 A I -- I don't have a specific number. I believe it was  
17 in the high teens.

18 Q In the high teens.

19 A Yes.

20 Q Okay. So less than 20 people.

21 A I believe that we chose to search for under 20, and our  
22 hit rate on those names was very high. In other words, we  
23 were able to, based on the names, locate information and be  
24 able to correspond with -- we didn't correspond with, but we  
25 believe we would be able to correspond with customers over 50

1 percent of the names that we searched on.

2 Q Okay. So you searched less than 20; and, out of those  
3 20 names, about 50 percent you would have been able to -- you  
4 were able to get some type of con -- some type of contact  
5 information or some way to contact those individuals.

6 A It was over 50 percent. I don't know the specific  
7 probability. But yes, I think that generally characterizes  
8 my comments.

9 Q Okay. And you did not run any of these searches  
10 yourself.

11 A I actually did run one or two. But -- but in general, I  
12 asked my team to do that, yes.

13 Q And the names you picked, did you say that they were  
14 unusual names, as compared to a Sue Brown or something like  
15 that?

16 A Yeah. It's a good question because, to the extent that  
17 there are generic names -- John Smith, Mary Jones -- yes, we  
18 agreed that would be difficult to identify the specific  
19 person. We looked at names that were not of that type.

20 And in general, I was also very interested, I reviewed  
21 the customer list myself to -- to assure myself that this was  
22 an accurate assessment and to evaluate, to your point,  
23 whether I thought that these names, in and of themselves,  
24 were meaningful. And there were -- again, I didn't do a  
25 search of the 9 million customer names to give -- and I can't

1 give you a specific probability or percentage. But a  
2 significant -- the vast majority of the names were not of  
3 that type, were not of the John Smith/Mary Jones type.

4 Q Meaning the vast majority of the names that you searched  
5 or the vast majority of the 9 million names are not --

6 A I can't say the 9 million names. I -- I looked through  
7 the database and scrolled through the first several hundred  
8 largest, so I went through in customer size order. And the  
9 vast majority of the names I saw were of a unique type that I  
10 believed were not of the John Smith/Mary Jones type, where it  
11 would not necessarily be useful to do a search for those.

12 Q Were a good number of those names not, I guess I would  
13 say common, say American names? Were they names that might  
14 be names of people living in other countries or names with --  
15 you know, not a Sue Brown, that -- Sue Brown is a very  
16 American name. You know, we have customers, right? All over  
17 the world, right?

18 A Yes.

19 Q And so a name that might sound a little unusual in the  
20 United States might not be that unusual in India or China.  
21 Isn't that true?

22 A I -- I think I understand your question. In my  
23 experience, there's a wide variety of names in the United  
24 States. We didn't place a lot of value in whether the name  
25 sounded western or sounded Asian, for example. We did a --

1 we tried to have a -- just an unbiased perspective as we did  
2 the search.

3 Q Are you personally familiar or knowledgeable about how  
4 common a particular name might be in China or India?

5 A I -- I -- I'm not sure how to answer that question.  
6 What I can tell you is that, when we did the searches, to the  
7 extent that there was a -- if there had been a large result  
8 set from a particular search, such that we didn't believe  
9 that we would actually be able to locate and contact and  
10 correspond with a customer, then that would have put that  
11 name, regardless of the reason, in the category of names that  
12 we did not believe we could actually contact through a  
13 search, again, regardless of whether it was a common name or  
14 for any other reason; they didn't have a social media  
15 presence, they protected their identification. I -- I didn't  
16 speculate.

17 Q Thank you.

18 Now, with respect to non-individuals, institutional  
19 customers -- and I understand that it would probably be  
20 pretty easy to locate contact information for an  
21 institutional customer, right? You agree with that, right?

22 A Depending on the institution, it may be easier, yes.  
23 Institutions generally have more of a footprint.

24 Q Although, there are -- I guess there are some  
25 institutional customers that might not be that easy to find

1 contact information for. You're saying smaller institutional  
2 customers -- I -- institute -- I shouldn't use  
3 "institutional."

4 Non-individuals. Are there some non-individual  
5 customers that might be harder to find contact information  
6 for, with just the name and nothing else?

7 A I -- I'm -- can you repeat the question? I'm not sure  
8 exactly what you're --

9 Q Okay. I'll move on.

10 A -- asking.

11 Q I'll move on to a different question.

12 With respect to non-individual customers -- I'm trying  
13 to think of the best way to put this. Companies that are  
14 looking for -- competitors of the debtors, the people -- the  
15 competitors you're concerned might poach customers. With  
16 respect to non-individual customers, institutional customers,  
17 aren't there sources that those competitors could go to, to  
18 find potential institutional customers that are interested in  
19 cryptocurrency or keeping accounts on cryptocurrency  
20 exchanges, other than looking at a customer list of a  
21 particular -- of the debtors', for example?

22 A I'm sure, if there are places where businesses that are  
23 seeking to acquire customers -- I'm sure, if there are  
24 indicators of interest in crypto, those businesses that are  
25 seeking customers have already utilized those external



1 sources. I don't know how that -- I guess I understand your  
2 question, but I'm trying to be careful about how I answer it  
3 only because I -- I -- I don't want to inadvertently share  
4 information about the customers. But there are a number of  
5 institutional customers that are unique, and the names of  
6 those -- excuse me -- institutions may not be widely known to  
7 the public or to the competitors in this industry.

8 And so I don't know -- I don't believe that simply --  
9 that the existence of other information sources materially  
10 changes my testimony here. I think the -- the critical  
11 element here is that these institutions and individuals have  
12 indicated by their activity on the exchange that they  
13 participate in this particular activity and that they would  
14 be valuable to a competitor or someone interested in  
15 acquiring this business in the future precisely because they  
16 have participated in this activity.

17 Q Now, Mr. Cofsky, is it your understanding that, prior to  
18 the bankruptcy filing, that all of the accounts of the  
19 debtors' customers were frozen?

20 A Yes, I believe that's correct.

21 Q And they've been frozen since that time, correct?

22 A To the best of my knowledge, yes.

23 Q Are you aware that there are allegations of billions of  
24 dollars of customer -- funds in customer accounts were  
25 effectively raided to make loans to Alameda; are you aware of

1 those allegations?

2 MR. GLUECKSTEIN: Objection, Your Honor. I think  
3 we're pretty outside of the scope of the testimony for this  
4 motion.

5 THE COURT: What's the relevance to his testimony,  
6 Ms. Sarkessian?

7 MS. SARKESSIAN: I believe that this witness'  
8 testimony is that these customer names should not be  
9 disclosed because they could be subject to poaching. My  
10 point is that I want to ask this witness to sort of develop  
11 what the situation was coming into the bankruptcy with  
12 respect to these customers and whether these customers might  
13 be interested in moving their funds out of the debtors'  
14 accounts for reasons that have absolutely nothing to do with  
15 potentially being contacted by some other competitor.

16 I mean, this is not a regular case where, you know,  
17 a business is having some financial trouble, they file for  
18 bankruptcy, they might be able to reorganize. They could be  
19 able to keep the customers; or, if they sell the business,  
20 the customers may want to go with it.

21 I would suspect that these customers may be rather  
22 upset about the current situation; and, therefore, I don't  
23 think poaching is the real problem here. If the concern is  
24 that these customers are going to leave the platform, I think  
25 they may be leaving the platform for reasons that don't have

1 to do with poaching. So that was my -- what I was trying to  
2 develop with the witness. But I guess I can save that for  
3 oral argument --

4 THE COURT: Okay.

5 MS. SARKESSIAN: -- if we want to do it that way.

6 THE COURT: Yeah, I think it is outside the scope  
7 of his direct testimony, so ...

8 MS. SARKESSIAN: Thank you, Your Honor. I think  
9 that finishes my cross-examination --

10 THE COURT: Okay.

11 MS. SARKESSIAN: -- of this --

12 THE COURT: Thank you.

13 MS. SARKESSIAN: -- of this witness on this  
14 particular motion. I will have cross on one of the other  
15 motions.

16 THE COURT: Understood. Thank you.

17 Mr. Finger.

18 MR. FINGER: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. FINGER:

21 Q Good morning, Mr. Cofsky.

22 A Good morning.

23 Q Just a couple of preliminary questions, if I may, before  
24 we get into heavier stuff.

25 In your affidavit, you say you're a partner at Perella

1 Weinberg Partners, LP, correct?

2 A Correct.

3 Q And that is the debtors' proposed investment banker. I  
4 don't know if the Court (indiscernible) to that effect --

5 UNIDENTIFIED: I'm sorry.

6 Q -- but --

7 UNIDENTIFIED: Could I just --

8 THE COURT: Yeah. We're having a hard time hearing  
9 you, Mr. Finger. You're going to have to speak up and --

10 UNIDENTIFIED: Maybe move the mic.

11 MR. FINGER: Yeah, I'm sorry, Your Honor.

12 THE COURT: All right.

13 MR. FINGER: Age has done its number on my voice.

14 BY MR. FINGER:

15 Q You -- Perella is the proposed investment banker for the  
16 debtors, correct?

17 A Correct.

18 Q Okay. When were you asked to make this declaration, to  
19 the best of your recollection?

20 A I -- I don't recall if it was before the New Year --

21 Q Okay.

22 A -- or somewhere thereabouts. Over the holidays, I  
23 believe.

24 Q So sometime in December. Is that fair?

25 A Yes, I believe that's correct.

1 Q At Paragraph 4 of your affidavit -- declaration, you  
2 identify a number of matters you've worked on. Do you see  
3 that?

4 A I do.

5 Q Which of those involved cryptocurrency?

6 A None of those involved cryptocurrency.

7 Q Okay. Page -- at Paragraph 7 of your declaration, you  
8 say that -- in the second sentence:

9 "A hallmark feature of cryptocurrency is a holder's  
10 ability to remain anonymous to the public."

11 Do you see that?

12 A Yes, I do.

13 Q Okay. Do you know whether -- are you familiar with  
14 Bitcoin?

15 A I am.

16 Q Okay. Do you know whether Bitcoin can be traced to the  
17 holder?

18 A I wouldn't put it in quite those terms. When you say  
19 "traced to the holder," I know that Bitcoin can be traced on  
20 the blockchain and it can be traced to the wallet. And so,  
21 to the extent that one is able to identify the owner of the  
22 wallet, one can trace to a particular user. But tracing to  
23 the wallet is not necessarily the same as tracing the -- it -  
24 - identifying the owner of the wallet.

25 Q Well, do you agree -- strike that.

1 Are you familiar with circumstances where authorities  
2 have recovered Bitcoin or other type of cryptocurrency --

3 A I'm --

4 Q -- by --

5 A -- generally --

6 Q -- tracing it to the holder?

7 A I'm generally aware of that, yes.

8 Q Okay. Now I want to turn to the statement you make in  
9 Paragraph 9:

10 "I do not believe that it would be difficult to  
11 look up and, in the case of the debtors' competitors, poach  
12 the debtors' customers if their names were to be made  
13 public."

14 Now the U.S. Trustee has asked you some questions on  
15 that, and I'll try not to duplicate.

16 First, practically, the names you get, do they include a  
17 middle initial?

18 A In some cases, yes.

19 Q Okay. Would you agree that it might be harder to trace  
20 someone, to find someone absent a middle initial?

21 A I think it -- you say "harder." Than what?

22 Q If you --

23 A Harder than what?

24 Q I'm sorry. I apologize.

25 If you have two names, Joe Smith, let's say, and one

1 says Joe Smith, and the other one says Joseph R. -- Joe R.  
2 Smith. Would the "R" be an identifier that could make it  
3 easier to locate, track down the owner?

4 A If your question is -- if you don't mind, I'm trying to  
5 be helpful here. The greater the lever of the identifying  
6 information, as a logical matter, I would agree the easier it  
7 would be to identify that particular user.

8 Q Okay.

9 A In this case, we -- we didn't look at the customer list  
10 and simply speculate about whether we would be able to locate  
11 and potentially correspond with users.

12 Q Uh-huh.

13 A We actually did the searches to determine whether that  
14 would be the case. So I -- I don't disagree with the logic  
15 of incremental information being more useful than less  
16 information, but we didn't rely upon the logic alone.

17 Q Thank you.

18 Now, in response to questions from the U.S. Trustee, you  
19 discussed the methodology your team used and the results they  
20 recovered, correct?

21 A Generally, yes, although I didn't go into too much  
22 detail about the methodology.

23 Q Have you made any documentation during that process to  
24 either the U.S. Trustee or me?

25 A You're asking have we provided any documentation with

1 respect to those searches and the results of those searches.

2 Q Well perhaps I'm being presumptuous, so let me step  
3 back.

4 In the course of that procedure were there written  
5 notes, or reports, or results that were represented to you?

6 A I did not review any written reports. I don't know if  
7 they exist. I had conversations with my team.

8 Q Okay. So you are reporting to us statements made by  
9 your team, correct?

10 A That is correct.

11 Q Do you know whether there was any documentation, be it  
12 email, be it written findings, regarding this process and the  
13 results -- and/or the results.

14 A Yeah, I don't know. As I said, I specifically recall  
15 that I spoke with the team and directed them to undertake  
16 these searches and then we followed up with a physical  
17 conversation regarding the results. I don't know if there  
18 was any correspondence among the team members, but I don't  
19 recall having reviewed a report on this question.

20 Q So do you -- as best as you can recall, did your team  
21 report back to you orally?

22 A Yes. That is correct.

23 Q So there is no way -- strike that.

24 You would agree with me there is no way anyone, the  
25 U.S. Trustee, me, or the Court, can validate what your team



1 did, is that correct, independently?

2 A I think it would be -- it shouldn't be particularly  
3 difficult to independently validate. I think it would be --  
4 I don't think you need to have this customer list in order to  
5 undertake your own assessment of whether given a particular  
6 set of individuals' contact information or names you would be  
7 able to locate those individuals online and be able to find  
8 enough information to be able to contact them.

9 Q But I think you agreed, in response to questions from  
10 the U.S. Trustee, that the degree of difficulty depends on  
11 the degree of commonality of the name, correct?

12 A I don't think that is exactly what I said.

13 Q I am paraphrasing. I agree.

14 A Yeah, I want to be clear that to the extent that there  
15 are names of the John Smith, Mary Jones type it would be very  
16 difficult to identify -- it would be more difficult to ensure  
17 that identification of that particular individual would be  
18 the individual on the customer list just given the common  
19 nature of the name.

20 So when we reviewed the customer lists I personally  
21 reviewed the customer list to determine and evaluate the  
22 extent to which the predominance were of that type of not and  
23 my conclusion was that they were substantially not of that  
24 type. But, yes, I would agree that to the extent that there  
25 is a very common name it would be more difficult to locate

1 that particular individual.

2 Q Let me make sure I understand; did you review -- how  
3 did you select the names?

4 A I reviewed the customer lists to ensure -- to assure  
5 myself, in the first instance, that -- I wanted to understand  
6 the relative size, concentration. I wanted to understand the  
7 extent to which the names of the institutions or the  
8 individuals were unique or general in nature.

9 I then asked my team, whose more technologically savvy  
10 then I am, to see if they would be able to locate these  
11 individuals or institutions by using generally available  
12 search technologies. And the response was relatively quick  
13 that there was a high hit rate in being able to locate these  
14 individuals.

15 To be clear, the information that we were able to  
16 locate was of a type that gave us a relatively high degree of  
17 confidence that these were the right individuals. We didn't  
18 correspond with them and so we can't say with absolute  
19 certainty, but their social media footprint indicated that  
20 they had a significant interest in crypto. And we evaluated  
21 their postings on various social media platforms, etc., which  
22 gave us a high level of confidence that the individual who we  
23 were searching for was actually the individual that we had  
24 located.

25 Q Again, I am going to bear dance a little bit; you said

1 you reviewed the client list, correct?

2 A The customer list, that's correct, yes.

3 Q How many customers are on that list?

4 (No verbal response)

5 Q I'll make it a little easier; as the opening today  
6 counsel for the debtors used the number 9 million. Does that  
7 seem about right?

8 A I have seen the number 9 million. I did not search  
9 through 9 million.

10 Q How many did you search through?

11 A Hundreds. I -- so I had an Excel spreadsheet with that  
12 information and it had the identifying information and the  
13 entitlement amount. I scrolled down, I can't say  
14 specifically, but several hundred because I was interested to  
15 know exactly -- again, as I indicated, I don't want to take  
16 up too much time repeating myself, but I wanted to make sure  
17 that, again, these would be unique names and identifiers.

18 Q And what did you -- what methodology did you use to  
19 determine that the 100 or 200 that you looked at were, in  
20 terms of commonality, the names were representative of the  
21 list as a whole?

22 MR. GLUECKSTEIN: Your Honor, I'm just going to  
23 object. This was all asked and answered by the United States  
24 Trustee.

25 THE COURT: I think we did go through this

1 already, Mr. Finger.

2 MR. FINGER: We did, but I don't think that --  
3 maybe I'm wrong, but I don't think there was any specific  
4 question regarding how the determination was made as to  
5 whether this sampling is a representative sampling.

6 THE COURT: I will give you some leeway, go ahead.  
7 Let's not retread ground we have already been through.

8 THE WITNESS: I didn't have a sophisticated  
9 methodology. I used my judgment that after having gone  
10 through page after page, after page, after page and seeing  
11 relatively the same type of information that that would be  
12 consistent. I knew I wasn't going to search through  
13 millions.

14 So after I scrolled through I believe that I also  
15 asked my team to do a sampling. I didn't want to just focus  
16 on the largest 20 customers, for example, but to be clear I  
17 just exercised my judgment and I didn't have a specific  
18 rubric or algorithm.

19 BY MR. FINGER:

20 Q Did you have any guidelines in determining how common  
21 or uncommon a given name would be other than your instinct?

22 A Yeah, again, I did not have anything other than my own  
23 judgment and my team's judgment to base that decision on.

24 MR. FINGER: Thank you. I have no other  
25 questions.

1 THE COURT: Thank you.

2 Anyone else wish to cross?

3 (No verbal response)

4 THE COURT: Redirect?

5 REDIRECT EXAMINATION

6 BY MR. GLUECKSTEIN:

7 Q Mr. Cofsky, just very briefly.

8 Counsel just pointed you to Paragraph 4 of your  
9 declaration. That reflects certain experience. Do you see  
10 that?

11 A Yes.

12 Q Outside of what is listed there in Paragraph 4 can you  
13 just state for the Court -- I believe you addressed this in  
14 your overview at the beginning, but can you state for the  
15 Court experience you have specifically in the area of  
16 cryptocurrency in related companies?

17 A Yes. I have been involved in a number of other crypto  
18 related situations including several capital raises for  
19 bitcoin minors and other crypto companies; not specifically  
20 focused on bitcoin, but other cryptocurrencies and other  
21 business models as well, including IPO advisory and liability  
22 management, both representing the company as well as  
23 representing creditor groups.

24 MR. GLUECKSTEIN: Thank you.

25 No further questions, Your Honor.

1 THE COURT: Thank you.

2 Thank you, sir. You may step down.

3 THE WITNESS: Thank you.

4 (Witness excused)

5 THE COURT: Any further evidence, Mr. Glueckstein?

6 MR. GLUECKSTEIN: No, Your Honor. We are prepared  
7 to move to argument.

8 THE COURT: Let me ask if the other objecting  
9 parties have any evidence they wish to introduce.

10 MR. FINGER: No, Your Honor.

11 MS. SARKESSIAN: No, Your Honor.

12 THE COURT: Thank you. Go ahead.

13 MR. GLUECKSTEIN: Thank you, Your Honor. Again,  
14 Brian Glueckstein for the debtors.

15 Your Honor, with respect to this motion most, but  
16 not all, as we have just heard, of the relief requested in  
17 the motion to protect the debtor's customer list and their  
18 creditors and to streamline disclosures is uncontested this  
19 morning. The purpose of the debtor's request to redact  
20 sensitive personal information of customers and other  
21 stakeholders is to protect the value to the debtor's customer  
22 list as an asset and to protect sensitive personal  
23 identifying information of creditors.

24 There is no objection to redacting the addresses  
25 of individual customers and other individual creditors. That

1 information, subject to the Court's approval today, would  
2 remain redacted.

3           The U.S. Trustee and the media objectors do object  
4 to the debtor's redacting customer and creditor names. And  
5 with respect to the U.S. Trustee's objection the addresses of  
6 non-individuals.

7           The objectors cite the general principals of the  
8 right to public access to records and bankruptcy disclosure  
9 requirements. They do not articulate any specific harm being  
10 suffered that requires disclosure today of the names and  
11 institutional addresses on an immediate basis. Nor do the  
12 objectors recognize, in our view, the Court's role in  
13 modifying those requirements for cause shown.

14           Your Honor, the debtors have been working hard to  
15 strike the correct balance on this difficult issue  
16 particularly in the still early stages of these Chapter 11  
17 cases to ensure the protection of their assets and customer  
18 information, but understanding the need for disclosure and  
19 transparency.

20           Your Honor, these Chapter 11 cases, as we have  
21 been hearing from when we first stood in front of you, are  
22 unprecedented. The debtors recognize that they have  
23 generated significant public interest. These cases also  
24 present unprecedented challenges, but the relief requested,  
25 including the redaction of customer names, has precedent in

1 this Court.

2 In Your Honor's well-reasoned opinion in Cred  
3 where redaction of both names and identifying information of  
4 a crypto currency platform's customers was permitted. The  
5 Court's reasoning applies here, but we submit the facts and  
6 the evidence before the Court here are overwhelming against  
7 immediate disclosure given the debtor's customer lists have  
8 more than 9 million names and addresses on them.

9 The U.S. Trustee invites the Court to rip-up  
10 precedent in this district and instead to simply adopt the  
11 conclusions reached in the Celsius case by Judge Glenn in New  
12 York. We submit, Your Honor, that decision is an outlier and  
13 certainly should not be wholesale adopted here, and it  
14 doesn't need to be.

15 In order to strike an appropriate balance as to  
16 the disclosure while providing the debtors and other parties  
17 more time to evaluate options and ensure all restructuring  
18 options for the debtor's assets, the debtors and their assets  
19 remain available. We are limiting our request today, as  
20 reflected in our reply papers, with the support of the  
21 creditors committee, to the redaction of names in the debtors  
22 -- of the debtor's customers and addresses of institutional  
23 customers for an additional six months subject to the right  
24 to request further extensions of the redaction authority.

25 These redactions are appropriate and necessary to



1 protect the debtor's commercial information pursuant to  
2 Section 107(b) of the Bankruptcy Code. Section 107(b), as  
3 the Court is aware, of course, permits the Court to protect  
4 for cause the debtor's confidential information.

5 Mr. Cofsky's testimony before the Court makes  
6 clear that the debtor's customer list, in his opinion as the  
7 debtor's proposed investment banker charged with maximizing  
8 the value of assets in such a process, including both names  
9 and contact information are a key asset and a source of  
10 value, potential source of value, at a minimum, for the  
11 debtors.

12 Mr. Cofsky's testimony this morning explained the  
13 companies that operate crypto asset management platforms work  
14 to identify new customers, attract, and enroll them, and  
15 establish them as customers. Mr. Cofsky concluded that the  
16 debtors would be harmed by the disclosure of customer names  
17 even with the redaction of addresses.

18 We heard on cross-examination questions about  
19 exactly how hard it would be, and is it easier or harder with  
20 the middle initial to identify these customers and contact  
21 them. We would submit, Your Honor, that the level -- the  
22 question before the Court today is not whether every one of  
23 the debtor's customers could be or even would be immediately  
24 contacted by competitors.

25 Mr. Cofsky's testimony and the position of the

1 debtors is that we believe there is significant evidence that  
2 that is likely to happen, at least with respect to  
3 significant customers, with respect to customers that are not  
4 known, as Mr. Cofsky testified this morning, in his view are  
5 not widely known to be customers in the crypto currency and  
6 digital asset space.

7           We would submit, Your Honor, that the conclusion  
8 of the debtor's proposed investment banker is highly  
9 probative of the limited question that is before the Court.  
10 The Court's conclusion in Cred overruled a similar objection  
11 from the U.S. Trustee on similar grounds. The Court  
12 concluded there that the debtor's customer list had some  
13 "intrinsic value." We believe here that is clear. Where  
14 we're talking about more than 9 million customers compared to  
15 the 6,500 or so that were at issue in Cred.

16           Importantly, as I noted, while the case to keep  
17 customer names and -- customer names confidential is, in our  
18 view, compelling the debtors are seeking this relief today  
19 only for a limited period of six months with the right to  
20 reserve to seek extensions.

21           Your Honor, I also want to briefly address the  
22 U.S. Trustee's arguments that granting this relief for any  
23 period of additional time would somehow hinder the  
24 administration of these cases? We believe that is not true  
25 at all. All of the necessary information, Your Honor, is

1 being served, will continue to be served, and provided to  
2 parties in interest as required. The debtors have worked  
3 when other parties have needed to serve documents to take on  
4 that responsibility and to serve documents on the debtor's  
5 creditor list where that, as I say, is necessary.

6 As in the interim order the proposed final order  
7 that we submitted includes the Court's language that was  
8 developed in Cred making clear that all parties in interest  
9 retain the right to seek copies of any redacted documents  
10 from the debtors or, if necessary, from the Court.

11 Your Honor, importantly, we believe that this  
12 balance is appropriate for today. If the redactions are  
13 granted on this basis to preserve the debtor's assets, to  
14 allow the strategic review process that is discussed, that's  
15 at issue -- I'm sorry, before the Court in connection with  
16 the bidding procedures today, the discussions that are  
17 underway that Mr. Dietderich referred to in his opening  
18 remarks, to allow all of that work to continue, and to  
19 mature, to hopefully a plan or sale process that benefits all  
20 stakeholders.

21 We're asking for the limited relief to maintain  
22 that customer list in confidence for a period of six months.  
23 If redactions are granted today on that basis the debtors are  
24 not asking the Court, and we submit the Court doesn't need to  
25 reach the issue at this time, of the propriety of redacting

1 customer names more permanently on the basis of Section  
2 107(c)(1). We reserve the rights on that issue, of course,  
3 ands to come back to the Court, but we don't believe that  
4 that issue needs to be adjudicated and we understand that  
5 that question presents some difficult issues for not only the  
6 Court, but for the debtors and other parties in interest.

7           Lastly, Your Honor, the debtors do request that  
8 the Court authorize the redaction of individual non-customer  
9 creditor and equity holder names to comply with the GDPR.  
10 It's briefed in our papers. That relief has historically,  
11 from what we see, been relatively routinely granted by  
12 Court's in this district. The U.S. Trustee did not object to  
13 that relief with respect to the interim order, but has  
14 objected to it on a final basis.

15           We believe that the U.S. Trustee is taking that  
16 position which seems to be a significant departure based on  
17 the Courts' reasoning in Celsius. We submit, Your Honor,  
18 that that position is somewhat short-sided. Citizens of the  
19 covered countries have a heightened expectation of privacy as  
20 a result of local law. And as detailed in our reply papers  
21 we do not believe there is a basis for the Court to conclude  
22 that the GDPR does not apply to the debtors, and regardless  
23 there is really no need to subject the debtors to potential  
24 fines for violations which would only harm all stakeholders.

25           So with that additional relatively modest piece we

1 are limiting the relief today to the question around  
2 maintaining the redactions with respect to the debtor's  
3 customer list in its entirety including names and addresses  
4 of institutional customers for a period of six months for  
5 entry to the order with all parties rights reserved.

6 Thank you.

7 THE COURT: Let me ask you a couple questions.  
8 Does it matter that the customers here are not the exclusive  
9 customers of the debtors?

10 MR. GLUECKSTEIN: I don't think so, Your Honor,  
11 because from our perspective, of course, there are customers  
12 that probably, and I assume with 9 million if these are  
13 people active in crypto, have investments on different  
14 platforms. And to the extent that those customers are  
15 accessible through other sources, of course, they can be  
16 contacted.

17 The question though before the Court, and that Mr.  
18 Cofsky was testifying about this morning, is whether or not  
19 we should put on the docket of this Court, effectively, 9  
20 million names that allow the debtor's competitors and  
21 potential acquirers of the debtor's assets and businesses  
22 giving them the roadmap to say these are the folks, here are  
23 the significant customers, they seek claim entitlement  
24 amounts, let me try to contact those people.

25 So it's not a question of exclusivity, it's a

1 question of exclusivity with respect to the list that the  
2 debtors have complied over time, you know, spending its own  
3 resources to put this together, whether that asset should be  
4 preserved. We submit that it is, that it should.

5 THE COURT: Why six months? What is the  
6 significance of asking for six months?

7 MR. GLUECKSTEIN: There isn't a significance, Your  
8 Honor, other than, I would say, a couple of things.

9 First, we want to try to be reasonable here and  
10 take this incrementally. We are not -- based on this we're  
11 not asking for a permanent authority to redact on the basis  
12 of preservation of the assets, again, with rights on 107(c)  
13 reserved.

14 We looked at how long we think it will take to  
15 move forward with a process to make, at least, a  
16 determination as to whether the customer lists are part of a  
17 sale process, are integral to a reorganization plan. Are we  
18 going to be standing here in six months and be able to -- can  
19 I say definitively that in six months all of these issues  
20 will be worked through? I can't, but we think it's a  
21 reasonable period of time where our thinking will be  
22 substantially advanced from where it is today. Is there a  
23 magic to six versus eight or five, no, but we thought it was  
24 a reasonable period of time.

25 The other piece, Your Honor, there are some

1 complications. We know. We discussed them at the first day  
2 hearing with Your Honor around claims. You know, once we set  
3 a bar date and how the claims reconciliation process is  
4 effected by these redactions. Those are issues we are still  
5 working through.

6 We don't believe, for a number of reasons,  
7 including because of the SOFAs and schedules extension that  
8 is before Your Honor today that we are going to be in a  
9 position to set an early bar date in this case so that the  
10 six month period factors into that to. We don't think we're  
11 going to be up against having to address some of the issues  
12 that we discussed back in November around what happens after  
13 we filed a bar date and all those claims remain.

14 THE COURT: Well the bid procedure motion that you  
15 have on that's for purposes of seeking to sell -- I think Mr.  
16 Cofsky actually testified that the entities that are sought  
17 to be sold pursuant to those procedures are exchanges,  
18 correct?

19 MR. GLUECKSTEIN: They are.

20 THE COURT: So -- and that -- what is the --  
21 remind me the proposed timeline for the sale of those assets  
22 or, at least, the bidding is supposedly done by the end of  
23 the month, right?

24 MR. GLUECKSTEIN: I believe its -- I believe the  
25 process in the bid procedures as contemplated -- I will refer

1 to Mr. Dietderich on the schedule.

2 MR. DIETDERICH: Your Honor, Andrew Dietderich,  
3 Sullivan & Cromwell.

4 It's a staggered schedule for the different  
5 businesses, but it will take a couple of months, at least, to  
6 get done.

7 THE COURT: Okay. And by then we will have some  
8 understanding, at least from that process, as to whether or  
9 not the creditor lists are going to be important to potential  
10 purchasers.

11 MR. GLUECKSTEIN: We will have some indication,  
12 Your Honor. As Mr. Cofsky testified this morning the main --  
13 what I would call the main exchanges, right, so FTX.com, FTX  
14 US, the main exchanges are not subject to the current  
15 process. We will be informed by the localized exchange in  
16 Japan, for example, as to the relevance there, but I think  
17 Mr. Cofsky testified this morning that the process for the  
18 main exchanges will take longer because that process is not  
19 yet formally underway as far as bidding procedures. There  
20 are lots of discussions that are ongoing.

21 I do think it is a good observation. We are going  
22 to start to be able to be informed by the different data  
23 points. The work that the professionals are doing, the  
24 strategic review that is underway, and the sale process of  
25 these other exchanges to have an understanding as to the



1 customer list.

2           So for all those reasons, Your Honor, we developed  
3 six months as a proposal because we thought it was a very  
4 reasonable next step.

5           THE COURT: Thank you.

6           MR. DIETDERICH: Your Honor, may I give you --  
7 sorry to speak out of order, but Mr. Dietderich again. May I  
8 give you the actual proposed dates; now these are the  
9 earliest possible sale hearing dates for the various  
10 businesses, but they range from February 27th to March 27th.

11           The other point that may be factually relevant for  
12 your consideration is we did, in the cooperation agreement  
13 with the JPL in the Bahamas, commit to them that we would  
14 work during a six month period on our project to consider a  
15 potential reorganization of the international platform. And  
16 this customer information and data would, of course, be  
17 important in connection with that work with them.

18           THE COURT: Thank you.

19           Anything further?

20           MR. GLUECKSTEIN: No. Absent any other questions  
21 from Your Honor I will cede the podium.

22           THE COURT: Mr. Hansen.

23           MR. HANSEN: Good morning, Your Honor. Kris  
24 Hansen with Paul Hastings, proposed counsel for the official  
25 committee once again, Your Honor.

1           So, Your Honor, the official committee joins in  
2 the debtor's arguments. We filed a joinder to that effect on  
3 the docket as well. I wanted to add a couple of points for  
4 the Court with respect to this issue.

5           Regarding the six months we collaborated on that.  
6 We talked about how you create value associated with the  
7 assets that the debtors are thinking about selling or  
8 reorganizing. And as you heard from Mr. Cofsky's testimony,  
9 there is inherent value within the customer list associated  
10 with these businesses. And as the Court is, obviously, well  
11 aware in connection with non-crypto businesses sometimes  
12 parties will pay for customer list alone, sometimes the  
13 customer list goes with those assets.

14           So the purchase and sale of customer information  
15 is a vital component of any type of a retail oriented entity  
16 and business. And, obviously, from an exchange perspective  
17 there were an awful lot of retail investors here. And so  
18 there is inherent value within those lists. I think that is  
19 uncontroverted. I think everyone here agrees with that.

20           So in balancing that we looked at it and said  
21 we've got two major tasks here. One is to assess the value  
22 associated with these assets from a sale perspective. Two is  
23 to assess the value associated with these assets from a  
24 potential "reboot" is how we've been referring to it on our  
25 side.

1           The reboot is complicated. There are global  
2 regulatory issues associated with rebooting the exchanges.  
3 Everywhere that the exchanges operate there are regulatory  
4 requirements that have to be met including the United States  
5 and globally. So it takes time to think through how that  
6 works. So it can't just simply be restarted in its existing  
7 or prior form because there were issues associated with it  
8 which, in some ways, we're here dealing with.

9           So it's a complicated exercise among many  
10 professionals on all sides to be able to figure out exactly  
11 what the steps are that are necessary to be able to think  
12 about the reboot, but that reboot may unlock incredible value  
13 for creditors and customers in connection with these cases  
14 because it may open the ability to have something that is a  
15 going concern, that could be sold, or could be distributed  
16 from an equitization standpoint in connection with a more  
17 fundamental plan of reorganization.

18           Then, obviously, with respect to the sales you  
19 have the four assets that the debtor is seeking to sell at  
20 the moment. We have more to say about that later when we  
21 come to the bidding procedures, but with respect to Embed,  
22 LedgerX, FTX Europe, and FTX Japan, as Your Honor noted, two  
23 of them are -- so LedgerX and Embed are non-debtors and those  
24 are currently operating.

25           So the customers of those entities and the

1 information associated with those entities, to the extent  
2 that they overlap with the information that debtor is seeking  
3 to protect here those are ongoing businesses which are  
4 interacting every day. There could be damage done to the  
5 value of those businesses by disclosure of those customers.

6 Similarly with respect to FTX Europe and FTX  
7 Japan, from the committee's perspective, we're just rolling  
8 up our sleeves. We are trying to understand what it is that  
9 is being sold here and what the value is. And tracking back  
10 to Mr. Cofsky's testimony and the point I made a moment ago  
11 there is inherent value in the customer list. And so when we  
12 look at it and say if that information was disclosed today  
13 without the opportunity to do more diligence to determine the  
14 inherent value in them that could do damage and it could  
15 seriously reduce the amount of distributable assets to  
16 creditors in connection with the cases. That would be a bad  
17 thing.

18 From our perspective, Your Honor, in a situation  
19 where there has been a global fraud and no one yet knows what  
20 the recoveries in these cases are going to be we need to make  
21 sure that we preserve the assets as best as we possibly can.  
22 We understand the competing interests that the media and the  
23 United States Trustee have noted with respect to  
24 transparency, but we just don't believe that there is a true  
25 interest in the media for in the broader universe of parties

1 -- potential party's interest in the cases of understanding  
2 who the customers were.

3           You have to think about like what is the purpose  
4 behind that versus the very clear and articulated purpose of  
5 trying to preserve value. So when we come back to that six  
6 month window and we ourselves, on the committee side, with  
7 our professionals have said it's going to take a significant  
8 period of time to really understand the reboot and really  
9 understand the asset sales.

10           To Your Honor's point, the earliest dates, which  
11 we think are too early, come up on February 27th and March  
12 27th with respect to the assets that are currently being  
13 sold. We will get a better look at the real interest of  
14 parties associated with the customer lists within that  
15 window, but we probably won't have the (indiscernible)  
16 because we think those are coming on too quickly.

17           So, again, Your Honor, and I would echo Mr.  
18 Glueckstein's point with respect to 107(c). 107(c) we do  
19 believe that -- and at a further hearing we can get into with  
20 the Court, to the extent that the Court wants us to, that  
21 there are real risks to customers in connection with the  
22 disclosure of identities. There are news stories and  
23 information that demonstrates that there have been  
24 kidnappings, there have been thefts, there have been other  
25 types of violent acts committed against people within the

1 crypto community and that is a very real risk and a very real  
2 concern.

3           With respect to the information that we're talking  
4 about today and the reason to protect it under 107(b) it's  
5 absolutely crystal clear that this is commercial information  
6 of the debtors and that it has value, and that there is a  
7 very clear case to be made that Your Honor can protect that  
8 information for the temporal period that we've asked under  
9 107(b). We reserve rights on 107(c) and if the Court would  
10 like further briefing on that and testimony on that we can do  
11 that, but we think you have enough of a record to cover it  
12 from a 107(b) perspective today.

13           So, Your Honor, if you had questions for me I  
14 would be happy to answer them.

15           THE COURT: No, no questions. Thank you.

16           MR. HANSEN: Thank you.

17           THE COURT: Could we turn up the microphones on  
18 the stand. It's as high as it will go. Everybody has got to  
19 keep your voices up. I mean I can barely hear some of it and  
20 I'm sure the people in the back probably can't hear it very  
21 well.

22           Anyone else want to speak in support before we go  
23 to the objectors?

24           (No verbal response)

25           MR. HARVEY: Excuse me, Your Honor, and may I

1 please the Court Matthew Harvey from Morris, Nichols, Arsht &  
2 Tunnell on behalf of an ad hoc committee of non-US customers  
3 of FTX.com.

4 We filed a joinder in this motion of the debtors,  
5 Your Honor. We support the debtors in their efforts to seal  
6 this. I think from the customer's perspective they have the  
7 107(c) issue which is not going forward today in terms of  
8 their own interest and protecting their own information, but  
9 also the debtors and the committee have identified, I think  
10 rightly, the customer list and the potential value in either  
11 a sale or restart of the platform as an avenue for recovery  
12 for members of our ad hoc

13 We do think it's important, particularly for the  
14 preliminary matter, the debtors have requested for six months  
15 to protect this information to allow the process to play out  
16 and allow the debtors to determine the best path forward with  
17 this customer list.

18 THE COURT: Thank you.

19 MR. HARVEY: Thank you, Your Honor.

20 THE COURT: Ms. Sarkessian.

21 MS. SARKESSIAN: Your Honor, would it be possible  
22 to have a five minute break?

23 THE COURT: Certainly. Well let's make it --  
24 let's make it 10 minutes just so everybody has -- well we got  
25 a lot of people here, let's make it 15 minutes so everybody

1 has time to use the facilities.

2 So we will recess for 15 minutes.

3 MS. SARKESSIAN: Thank you.

4 (Recess taken at 10:39 a.m.)

5 (Proceedings resumed at 10:58 a.m.)

6 THE COURTROOM DEPUTY: All rise.

7 THE COURT: Please be seated.

8 Ms. Sarkessian.

9 MS. SARKESSIAN: Your Honor, Mr. Finger asked if  
10 he could go first.

11 THE COURT: Okay.

12 MR. FINGER: Your Honor, at the outset of my  
13 comments I move to strike the debtors reply because it  
14 introducing new material which should have been included in  
15 his opening brief, and has been raised for the first time.  
16 For example, Paragraph 17 debtors invoke Japanese law. Two  
17 laws, the acclimate protection of personal information and  
18 the Financial Instruments and Exchange Act. They should be  
19 waived; however, because they have raised them to protect my  
20 client.

21 The first one, the APPI Section 17(3) allows the  
22 use of such information when doing so is necessary to  
23 cooperate with a "national government organ" of a foreign  
24 company. Now there can be a debate back and forth as to what  
25 that means. Usually when Courts deal with foreign nation's



1 law expert testimony is required.

2 The point here is that --

3 THE COURT: Not always.

4 MR. FINGER: Not always. I --

5 THE COURT: I can look it up in Martindale-Hubbell  
6 and that is sufficient.

7 MR. FINGER: I don't -- I never mean to -- but  
8 there has been nothing provided to this Court showing that  
9 this article section does not apply. And as for the  
10 Financial Instruments and Exchange Act that law applies to  
11 securities trading. Most crypto is not deemed a security and  
12 so it's outside FIEA's jurisdiction. Some tokens are, but  
13 debtors have not established that their crypto falls within  
14 the jurisdiction of the FIEA.

15 Similarly, for the same reasons --

16 THE COURT: Well this isn't just their crypto,  
17 right?

18 MR. FINGER: I understand. Yes, Your Honor. The  
19 crypto involved -- I will make a -- crypto involved in this  
20 matter.

21 THE COURT: It doesn't mean the debtors in this  
22 case have more than just their own crypto on the exchange.  
23 They were in exchange for all types of crypto, right.

24 MR. FINGER: But the point being that if it is not  
25 -- if the crypto involved, be it their own or their

1 customers, is not within that limited categories then it is  
2 outside the jurisdiction of FTI. This is a red herring.

3 For similar reasons, Your Honor, we want to strike  
4 the testimony of Mr. Cofsky. His testimony -- first, his  
5 affidavit was provided three days ago with no real  
6 opportunity to test it. Not even in this Court we've had no  
7 opportunity to depose Mr. Cofsky or his staff who worked on  
8 this thing. His testimony was very general. They looked  
9 through social media, they picked certain names. We had no  
10 opportunity to test that. They were obligated to provide  
11 this information in their opening motion.

12 But now let's turn to the justifications given for  
13 sealing.

14 THE COURT: Just to close the loop on this, Mr.  
15 Finger, I will deny both of those motions.

16 MR. FINGER: All right. Thank you, Your Honor.

17 The justification for sealing, they claim the risk  
18 of identity theft and cyber scams. Think about all of the  
19 creditor's lists that have been publicly identified in  
20 bankruptcies over the decades. Let's just even limit it to  
21 when Pacer came along. With all of that there is absolutely  
22 no evidence presented to this Court that there are any  
23 identity theft or scams occurred as a result of those  
24 creditor lists being made public. It's no counter to say  
25 this case is different because it involves crypto currency.

1 THE COURT: I think they're not pursuing the  
2 107(c) basis for sealing the customer list at this point.

3 MR. FINGER: Not the customer list, but this is  
4 also a list of creditors.

5 THE COURT: Well I guess there's a question, are  
6 they creditors, or are they customers, or are they both. It  
7 could be both, but I don't know. At this point in the case I  
8 don't know.

9 MR. FINGER: The fact that that is not established  
10 -- well, never mind I will withdraw that.

11 The fact is identity thieves don't care what the  
12 nature of the business is, they just want names to use.

13 Your Honor heard some testimony about commonality  
14 of names. In fact, Your Honor, I did an experiment last  
15 night through a website called TruthFinder.com. I put in  
16 Your Honor's name and came back with 58 people who share your  
17 name; 57, I'm sorry. Now, in candor, that lists the  
18 differentiation because it included middle names and middle  
19 initials.

20 We have no objection to redaction of middle names  
21 or middle initials, but there is nothing before the Court  
22 that tells the Court how many of the names that have been on  
23 the list do not have multiple people with those names. Its, I  
24 think, a stretch to say, well, if we're able to go through  
25 five or six people of the same name and we come up with them.

1 Even Mr. Cofsky testified that it becomes harder if it's a  
2 common name. To extrapolate from that is harder when there  
3 are numerous people sharing the same name, but that is  
4 shooting in the dark and that is not enough of a threat.

5 Of course, using identity theft as a justification  
6 for sealing leads to the conclusion that all creditors or  
7 customer lists in every bankruptcy can be sealed to protect  
8 the creditors. Your Honor will be creating a per say rule.  
9 Debtors have not provided any polling of a random sampling of  
10 their customers to assess their fears of disclosure for cyber  
11 bullying or cyber scamming and identity theft. None of the  
12 debtor's customers here is claiming concerns.

13 THE COURT: I think you had one ad hoc group that  
14 came forward and was supportive of the debtors.

15 MR. FINGER: The ad hoc group, as I understand it,  
16 were claiming their concern is not under cyber scamming, but  
17 as to their rights under foreign law to confidentiality.

18 Turning to the poaching and reducing the  
19 commercial value of the list, again, this goes back to how  
20 common the names are, and there's been no effort to try to  
21 segregate; it's the baby in the bath water. William Smith,  
22 Maria Garcia, James Johnson, Daniel Brown, Thomas Miller.  
23 Again, the Google search said that these are examples of  
24 common names of the most common name combination in the  
25 United States.

1           So the potential for poaching, I respectfully  
2 submit, is not enough. Its high evidentiary standard they  
3 have to meet and the fact we provided cases to Your Honor --  
4 in responses to Your Honor which says that. A statement that  
5 something could happen and in the absence of evidence showing  
6 it is likely to happen or will happen does not satisfy the  
7 first amendment evidentiary standard.

8           As for the GDPR I would draw the Court's attention  
9 to a case In Re Avandia Marketing Sales Practices & Products  
10 Liability, it's an Eastern District of Pennsylvania case in  
11 2020, 484 F. Supp 2d, 249. The Court ruled that applying  
12 principles of comity, denial of public access based upon a  
13 foreign law would be contrary or prejudicial to the interests  
14 of the United States, but even apart from that Section 49.1  
15 of the GDPR says there is an exception to the requirements of  
16 that law for "the establishment, exercise or defense of legal  
17 claims." Defendants have not even mentioned this, but  
18 certainly not have established that the exception is  
19 (indiscernible).

20           Debtors argue at Paragraph 3 of their reply that  
21 the objectors did not articulate any bonafides reason for  
22 disclosure at this time; however, this confuses the burden.  
23 Judicial documents are presumptively public and the public is  
24 entitled to see them as soon as their filed and they become  
25 part of the judicial record. The purpose of public access is

1 to ensure public confidence in our Courts and their rulings.  
2 The burden is on the debtor to explain why sealing is  
3 appropriate and not vice versa.

4 We also believe it's inappropriate to ask for a  
5 six month stay or delay with no assurances -- certainly no  
6 assurances that that will be the end of it, but even in the  
7 event that there are assurances I quote from the Supreme  
8 Court case Elrod v. Burns:

9 "The loss of first amendment freedoms, even for  
10 minimal periods of time, unquestionably constitutes  
11 irreparable injury."

12 Public access is derived from the first amendment  
13 as does Section 107.

14 Paragraph 16 of their reply debtors reiterate that  
15 the customers are identified the value of the business "could  
16 be materially harmed, diminished or disputed." As I  
17 mentioned earlier, we cited cases in our brief which they did  
18 not respond to in their reply, our brief in the opposition  
19 stating that speculating as to what could happen as opposed  
20 to showing with evidence what will happen is insufficient to  
21 meet their evidentiary burden. There is a case out of  
22 California we cited in our brief, but also the Celsius case  
23 out of New York states the same thing.

24 As to the In Re Cred case I was not involved, Your  
25 Honor was. I will not presume to imagine Your Honor's

1 considerations in that case. But an objective reading of  
2 Your Honor's opinion seems to think that the Court was not  
3 necessarily focusing on evidentiary requirements or the  
4 argument that there was no evidence supporting sealing.  
5 Since then the Celsius case has come out and while if another  
6 Court and is not binding on Your Honor, Your Honor is free to  
7 consider it as persuasive precedent in reassessing the Cred  
8 case.

9           At Paragraph 28 of their reply the debtors cite to  
10 a number of cases where this Court has allowed redacting  
11 names pursuant to GDPR; however, defendants fail to point out  
12 that with the exception of the last one of those cases listed  
13 those motions were granted as unopposed which there was no  
14 opposition. And unopposed -- orders based on unopposed  
15 motions have no precedential value.

16           The last one was proposed by the trustee and there  
17 was no new analysis in it. So it lacked persuasive force.

18           So in sum there is no competent evidence that any  
19 of the evils asserted by the debtors, identity theft,  
20 devaluation of the customer list by poaching, violations of  
21 international law, present a genuine or substantial risk.  
22 All the debtors have presented to the Court are speculation  
23 unsupported by competent evidence; however, to the extent  
24 that redaction is required it must be limited, as limited as  
25 possible, to meet the goals.

1 Redacting the addresses allows this and I throw in  
2 redacting middle names and initials. This is sufficient and  
3 if the Court is inclined to redact that should be the limit  
4 of it.

5 Unless Your Honor has any questions I yield the  
6 podium.

7 THE COURT: Thank you, Mr. Finger.

8 MS. SARKESSIAN: Thank you, Your Honor. Again,  
9 for the record, Juliet Sarkessian on behalf of the U.S.  
10 Trustee.

11 Your Honor, the bankruptcy process operates like  
12 the rest of the Court system on the bedrock principle of  
13 American jurisprudence that the public has a right to access  
14 of judicial records and only under very limited circumstances  
15 may a Federal Court restrict or deny that access. Here, the  
16 debtors are seeking a very wholesale redaction of a lot of  
17 information on any papers to be filed. That is what they  
18 say, any papers to be filed in this Court or may, otherwise,  
19 made publicly available in the Chapter 11 cases.

20 They are looking to redact names, addresses, email  
21 addresses of all customers whether they be individuals or  
22 entities, the names, addresses and email addresses of all  
23 non-customer individual creditors or equity holders if they  
24 are citizens of the UK or member nations of the EU, and maybe  
25 now Japan. I am not quite clear about that. And then also



1 the addresses and email addresses of all other creditor or  
2 equity holders who are individuals regardless of their  
3 citizenship. Of course, the U.S. Trustee has said we do not  
4 object to the redaction of addresses residential or any  
5 addresses with respect to individuals; whether they be  
6 citizens of the EU, the United States, or anywhere else.

7 Now the debtor's counsel started out stating that  
8 bankruptcy is a fishbowl. We have heard this many times.  
9 And, in fact, that the debtors welcome that. The committee  
10 said the cases need to be transparent. We agree with that;  
11 however, that is not what has happened in this case.

12 In the interim order entered on this motion the  
13 debtors -- excuse me, the Court allowed the debtors to file a  
14 creditor matrix under seal with a redacted version then to be  
15 filed. It's been two months. There is no creditor matrix on  
16 file, not under seal, not redacted, nothing. I double  
17 checked last night, I sent an inquiry to debtor's counsel to  
18 make sure I had not missed it, it's my understanding, and  
19 they can correct me if I'm wrong, that is still not on file.

20 So we don't know who any of the creditors are in  
21 this case, be it customers or anybody else. We don't know  
22 who the top 50 creditors are because that was all redacted.  
23 We don't have any monthly operating reports. The first ones  
24 were due December the 21st. I don't know when we're going to  
25 see any monthly -- actual monthly operating reports. The

1 debtors have proposed to file some type of aggregated report  
2 of some kind that is not a monthly operating report and then  
3 later at some point in time, we don't know when, they will  
4 start filing proper monthly operating reports.

5           We don't have schedules, we don't have statement  
6 of financial affairs, we don't have Rule 2015.3 reports.  
7 Yes, we have now come to an agreement about when those are  
8 going to be filed, but the majority of them will not be filed  
9 until March the 15th. The debtors have reserved the right to  
10 ask for further extensions.

11           So we have very little information here. This is  
12 the opposite of a fishbowl. And redacting customer and other  
13 creditor information to the extent that the debtors are  
14 seeking is only going to add to that lack of transparency.  
15 And here what we are talking about is we're talking about  
16 redaction as very essential documents that are part of the  
17 bankruptcy case; the creditor matrix, the schedules, the  
18 statement of financial affairs, professional disclosures they  
19 have been redacted as well to the extent that there was a  
20 reference to a customer name or an individual creditor.  
21 Those were redacted.

22           So these are all really critical documents that  
23 are part of the bankruptcy process. And there needs to be --  
24 the case law says, that we have cited, there needs to be a  
25 showing of extraordinary circumstances and compelling need

1 for these types of redactions, before any type of redactions,  
2 but especially on such fundamental documents that are part of  
3 the core of the bankruptcy case.

4 Here the debtor has really nothing more than some  
5 vague statements, and I will get it into, in a minute, Mr.  
6 Cofsky's testimony, but very, very limited testimony or  
7 evidence about something that requires a showing of  
8 extraordinary circumstances. We do not believe they have met  
9 their burden and it is the debtor's burden here to establish  
10 that the information can be sealed under either 107(b) or  
11 107(c).

12 If Your Honor could bear with me for a moment,  
13 please.

14 So 107(b)(1) talks about confidential commercial  
15 information. Now the debtors and the committee keep  
16 referring to a customer list. It's not a customer list, it's  
17 a list of creditors. It's the creditor matrix, it's the list  
18 of creditors in the schedules, in a professional disclosure,  
19 and it's a reference to somebody who is a creditor. They may  
20 also be a customer, but we're not talking about a separate  
21 document that is a customer list.

22 I suppose what the debtors would say was, well, we  
23 have so many customers who were creditors that if you looked  
24 at the creditor matrix, whenever it may be filed, that one  
25 could assume that most of those people are customers and not

1 other kinds of creditors. There is not going to be any  
2 distinction, there is not going to be like a separate section  
3 that these are customer creditors and these are other  
4 creditors. It's a creditor matrix. Same thing with the  
5 schedules, there is no distinction -- I mean there is a  
6 distinction based on priority if it's a general unsecured  
7 claim, but there is not a distinction between creditor  
8 customers and creditors who are some other kind of creditor.

9           With respect to -- even assuming that the debtors  
10 would be correct in making that argument that competitors  
11 will just assume that everybody on that list is as customer,  
12 Your Honor made the point that many of these customers may  
13 not be exclusive customers, they may already dealing with  
14 competitors.

15           With respect to -- I think the point is very  
16 important in terms of poaching. Again, all we are talking  
17 about for individuals are their names and no other  
18 information. Yes, for institutional or non-individual  
19 creditors the U.S. Trustee believes that it is appropriate to  
20 include their addresses as well as their names, but for the  
21 individuals it would just be their names.

22           Mr. Cofsky's testimony that, well, just a name  
23 alone, just a customer name alone would give you an ability  
24 to find information to contact them. That was based on not  
25 even any work he personally did. He had a staff look at less

1 than 20 names on the -- out of the 9 million names less than  
2 20, there was no methodology that was explained as to how  
3 they picked the names, although he indicated -- I believe he  
4 indicated they looked for names that were not extremely  
5 common; although, again, I would make the point that there  
6 are names that might be uncommon in the US, that look  
7 uncommon to us because we're not familiar with them, that  
8 might be very common in other parts of the world. I am  
9 always surprised I see names and I think, oh, that is an  
10 unusual name and then find out, oh, that's actually very  
11 common in Japan, China, or whatever the country might be.

12           So we don't have any methodology. There was less  
13 than 20, that's nothing. And out of the less than 20 he  
14 said, well, more than 50 percent we could get information on.  
15 So it wasn't even out of the 20 or less than 20, you know, we  
16 were able to get information on all of them. That's a very,  
17 very slender thread, based on hearsay evidence, but even if  
18 it wasn't, a very slender thread to say, all right, because  
19 of less than 20, 50 percent of those, you were able to find  
20 some contact information, whether that's the same person or  
21 not, who knows, but potentially, it could be the same  
22 customer. That's a very, very slender thread to say,  
23 therefore, you may redact all customer names from every  
24 single document that's going to be filed in the case.

25           Now, let's talk for a moment about this six-month

1 restriction. Six months is a really long time in the  
2 bankruptcy world; as Your Honor is aware, a lot happens. In  
3 this case, during these six months, we are hopefully, going  
4 to have schedules and statements filed. This information is  
5 relevant to that. Sales will be taking place. Hopefully, a  
6 creditors matrix will be filed at some point. A lot happens  
7 in six months.

8           And then, of course, at six months, they're going  
9 to come back and they may still ask for another extension.  
10 But even if it's only six months, that information is  
11 important information to be out there, and, again, we're  
12 going to be getting schedules and statements that have so  
13 much redacted, they're probably going to be next to worthless  
14 for anybody who doesn't see the unredacted version.

15           And, Your Honor, I would also like to make the  
16 point that I was trying, very ineffectively, to make with  
17 Mr. Cofsky. This is not a situation where you're coming in,  
18 where the customers of the debtor, you know, are likely to be  
19 happy with the situation. Well, maybe that's true in all  
20 bankruptcy cases, but you have a very extraordinary situation  
21 here. You have a situation where the customer accounts were  
22 frozen prior to the bankruptcy filing and have been frozen  
23 since then. These customers, the online customers cannot get  
24 access to cash, coin, whatever might be in those accounts.  
25 No access.

1           At the same time, they learned that there were  
2 allegations of a massive fraud, that customer accounts were  
3 raided and the funds were transferred to Alameda in the  
4 amount of \$10 billion of customer funds. So, it's probably  
5 reasonable to think that these individuals, these customers  
6 with all of this happening, if they're going to other  
7 platforms. Well, they can't have access to their funds yet,  
8 but when the time comes when they have access to their  
9 accounts, they may be looking for competitors or they may be  
10 looking to transfer this to traditional banks.

11           So, you know, it's not a situation where you have  
12 a customer base that might be relatively happy, the debtor  
13 files for bankruptcy, and now you're worried, you know, they  
14 would be happy, but now you have competitors coming and  
15 poaching them. I would say, you know, I think it's  
16 reasonable to assume that these customers, many of them, are  
17 very unhappy with the current situation and are probably, you  
18 know, very well may, on their own, be looking to transfer  
19 when they can or maybe, like, I would say ripe for the  
20 poaching if any competitor came along. So, I think the  
21 situation is different than other types of cases.

22           Then I want to talk a minute about the 107(c)  
23 argument. So, if I understand correctly, the debtors are now  
24 saying that they want to hold off that argument until another  
25 time. Their motion made an argument under 107(c). They

1 cited that statute. We responded. Our objection was filed  
2 on December the 12th. They've had, virtually, a month.  
3 They've had plenty of time. The Committee addressed it.

4 I don't understand this. Like, if they had any  
5 evidence to put on that point, today was the day to put on  
6 the evidence and there was no evidence that in name alone,  
7 could subject an individual to any type of harm, be it by --  
8 I don't know if it was the Ad Hoc Committee's counsel,  
9 somebody talked about kidnapping with a name. We don't even  
10 know what country these people live in. There's no evidence  
11 of that. There's no evidence of identity theft, based upon a  
12 name and nothing else. There's no evidence presented that a  
13 customer's accounts could be hacked with just a name. No  
14 evidence on that. Or that the person's safety could be  
15 compromised.

16 And the Ad Hoc Committee, of course, cited to Your  
17 Honor's ruling in Cred, also cited to Judge Owens' ruling in  
18 Clover, and they attached the transcript. Clover had to do  
19 with residential addresses, not, you know, names. Not names  
20 alone. I think there were 10 members of the European Union  
21 in there and there wasn't much discussion of that, but apart  
22 from those 10, they were talking about residential addresses;  
23 again, we are not objecting to that.

24 And, frankly, Your Honor, if you get to the point  
25 where you are redacting individual creditor's names, not the



1 addresses, but their names, as well, with the idea that,  
2 otherwise, there could be identity theft, the amount of  
3 sealed filings in this court would be enormous, I mean, every  
4 single, including Chapter 7 and Chapter 13 cases. Debtor's  
5 name, the individual creditors, all those -- proofs of claim  
6 filed by individual creditors, is all of this going to be  
7 filed under seal? It's not a workable -- it's not workable  
8 and there's nothing under 107(c) that would support redacting  
9 names based on the idea that, otherwise, there could be  
10 identity theft. But, again, there's been no evidence and if  
11 there was, this was the day to put on the evidence on that  
12 point.

13           So, to recite an issue on the burden of proof, we  
14 cited the Third Circuit case, Cendant Corp., that the debtors  
15 have the burden of proof on 107(b), as well as 107(c). And  
16 under 107(b), again, the debtors must establish and  
17 demonstrate an extraordinary circumstance and compelling need  
18 to obtain protection. That's from Food Management, which I  
19 believe is actually from the Southern District.

20           I'll also mention that, you know, in Mr. Mosley's  
21 declaration, which came -- that was filed in support of the  
22 initial motion, he used the term, he said public  
23 dissemination of customer lists could give the debtors'  
24 competitors unfair advantage. He didn't say, "would"; he  
25 said, "could." So, that's a very low level of argument to

1 meet an extraordinary-circumstances test.

2           So, let's speak a little bit about foreign law.  
3 First of all, as we stated in our objection, we're in a  
4 United States Federal Court. United States federal law  
5 controls over foreign law. We cited a Supreme Court case on  
6 that point. Not in this exact connection, but with regard to  
7 a French blocking statute. But beyond that, as Mr. Finger  
8 made the point, and we made the point in our objection, that  
9 this does fall within the exception of the GDPR because this  
10 is a legal proceeding and there's a legal claims exception  
11 for that.

12           Now, the debtors, in their reply -- in their  
13 initial motion, the debtors' discussion of the GDPR was in  
14 one paragraph, paragraph 20. It references the GDPR. It  
15 doesn't even provide a citation as to where to find it. It  
16 doesn't quote from it. It says the GDPR may apply to the  
17 debtors -- may -- and it doesn't even say what it is that the  
18 GDPR protects, other than it says home addresses of  
19 individuals, which again, not an issue -- we're not objecting  
20 to that. So, obviously, we spent a lot of our objection  
21 going into the details of the GDPR.

22           But I want to look at in the reply, the debtors  
23 did make two arguments, with respect to the GDPR, that I  
24 would like to address. So, the first one, in paragraph 25 of  
25 their reply, the debtors argue that while the U.S. Trustee

1 notes that processing of personal data is lawful if it is,  
2 "necessary for compliance with the legal obligation to which  
3 the controller is subject," the U.S. Trustee ignores that any  
4 such legal obligation, "should have a basis in union or  
5 member-state law," not in U.S. law. And they cite  
6 Article 40 -- excuse me -- Recital 45 of the GDPR.

7           Recital 45 of the GDPR says, for the debtors to  
8 process information, meaning, to collect information, code  
9 it, transform it to a usable format, the processing has to be  
10 legal under the laws of the EU or its individual member  
11 states. The recital does not say anything about compliance  
12 with laws outside of the EU.

13           And Recital 45 is not relevant to what we're  
14 talking about. It's a different issue. It's not talking  
15 about an exception for when this information can be  
16 disclosed; it's talking about the way in which the  
17 information is processed. It must be processed under the law  
18 of the applicable EU state.

19           The second argument that the debtors make in  
20 paragraph 26 of their reply says that the U.S. Trustee is  
21 conflating transferring of information with processing of  
22 information. They -- so, they -- I believe the argument is  
23 that the exception in Article 45 [sic] that allows the  
24 disclosure in connection with legal proceedings, applies only  
25 to the transfer of personal data, not the processing of

1 personal data, and that what the -- that the disclosure would  
2 be processing, not transferring.

3           There's no authority cited for this position.  
4 We -- you know, I can't say that I can cite any authority for  
5 the contrary position, but they cite no authority to say that  
6 there's some distinction here and that or the exception in  
7 Article 49 [sic] only applies to processing and not actually  
8 disclosing in connection with a legal proceeding.

9           With respect to Japanese law, I mean, that was not  
10 raised. It was not mentioned that their motion. We saw it  
11 for the first time, Sunday at 4:00 p.m. I have not been able  
12 to reach an expert in Japanese law since Sunday. There was  
13 not any official translation of these Japanese statutes that  
14 were provided. They do not -- the debtor does not quote the  
15 operative provisions. There's obviously no expert witnesses  
16 to testify about Japanese law. They just put in their reply,  
17 This law -- these two statutes apply and these statutes do  
18 not have any exception for legal proceedings.

19           So, I, really, I am not in a position to say  
20 anything about Japanese law, other than the fact that this  
21 was something that was -- should have been brought up in the  
22 initial motion and that would have given us more time to  
23 respond to that.

24           So, Your Honor, another point I want to bring up  
25 that we mentioned in our objection that is significant is

1 that if you shall determines that to whatever degree Your  
2 Honor would grant the motion for file information under  
3 seal -- I'm sorry -- to whatever degree Your Honor would  
4 allow the debtors to redact information from the court  
5 filings, the unredacted versions of those documents must be  
6 filed under seal with the Court.

7 Now, the debtors in their reply said, Well, of  
8 course we'll do that, but the proposed order only states that  
9 the creditor matrix must be filed under seal. That was a  
10 compromise when we were discussing it at the interim stage.

11 The order, I would request, to the degree that  
12 anything is allowed to be redacted, that the order provide  
13 that the unredacted version must be filed with the Court.  
14 And I would also ask --

15 THE COURT: That's a requirement of the Local  
16 Rules, isn't it?

17 MS. SARKESSIAN: Yes, it is, Your Honor.

18 But I don't want anybody to say, Well, the order  
19 doesn't say it has to be done. The order only talks about  
20 redaction, it doesn't talk about sealing, and therefore, the  
21 order somehow trumps the rule.

22 So, I just want that to be clear that those  
23 filings will be made. And it would also be nice to know when  
24 the creditor matrix is going to be filed, both, in a -- if it  
25 is to be sealed, in a sealed version, and in a redacted

1 version, as well.

2 If Your Honor could just give me a moment to make  
3 sure that I've covered everything.

4 (Pause)

5 MS. SARKESSIAN: So, Your Honor, unless Your Honor  
6 has any questions for me, my argument is concluded.

7 THE COURT: Thank you.

8 MR. GLUECKSTEIN: Your Honor, for the record,  
9 Brian Glueckstein for the debtors. Just a couple points very  
10 briefly.

11 Just to take the last point first, the debtors, of  
12 course, will file any documents in this case that need to be  
13 filed under seal, under seal, according to the Local Rules  
14 and I will make that representation that Ms. Sarkessian has  
15 asked for. That's not an issue.

16 With respect to --

17 THE COURT: Of the creditor matrix, you mean?

18 MR. GLUECKSTEIN: With respect to the creditor  
19 matrix, Your Honor, the creditor -- we're conflating a couple  
20 of issues. As has been well-documented, and we have  
21 disclosed to the Court, there are significant issues with us  
22 filing the entirety of the customer list, from a timing  
23 perspective, access to data and information. The Court may  
24 recall we required additional time and we had to come up with  
25 a creative process to get our top-50 list done in order to

1 view information that we couldn't fully access in terms of  
2 the informational databases.

3 Those lists are on file in redacted form. The  
4 unredacted forms have been filed. We sealed the top-50  
5 lists. Ms. Sarkessian and the U.S. Trustee's Office, of  
6 course, has them.

7 With respect to the timing of the full creditor  
8 matrix, that issue, Your Honor, you know, we're trying to,  
9 you know, we're trying to get kind of clarity on the timing.  
10 It's the volume of the nine-million-plus names and contact  
11 information, accessing the systems is taking time. We are  
12 working as hard as we can to get that on file and we will  
13 file that, if we're authorized to redact the information  
14 we've asked for today for the six-month period. That, of  
15 course, will be filed, the full nine-plus-million names under  
16 seal as soon as we're in a position to do so, which we hope  
17 is very soon.

18 What we will do, and what we can undertake to do,  
19 Your Honor, is file what we have now and what we've been  
20 using for service, file that, and then update it as we get  
21 the full nine-million-plus names into the matrix. So, we're  
22 happy to do that, Your Honor.

23 THE COURT: So, let me ask you this, you're not  
24 proposing that you would redact from filings? One of the  
25 things Ms. Sarkessian raises is that you want to redact not

1 just the creditor matrix or the customer lists, but also any  
2 reference to any customer or creditor in any other filing in  
3 the court. And I'm assuming you're not proposing to do that  
4 if that particular customer has already self-identified.

5 MR. GLUECKSTEIN: We have not, Your Honor, and  
6 that's another issue that Ms. Sarkessian raised, right, this  
7 idea that there are customers who want to go to competitors  
8 or want to move their accounts, which, of course, we  
9 understand. And they're not in the position, certainly, to  
10 take their account at FTX at this point because of the  
11 Chapter 11 process, but they're certainly free to go to a  
12 competitor, self-identify themselves to a competitor, and  
13 open an account somewhere else if they haven't already.

14 And, of course, we did as this issue some at the  
15 first day hearing, any creditor or customer is free to come  
16 forward and participate in this case, identify themselves  
17 publicly, identify themselves in the docket of this court.  
18 The documents -- and we have, of course, no issue with that  
19 and wouldn't seek to restrict that -- from the perspective of  
20 the documents that Ms. Sarkessian was reflecting -- was  
21 commenting on this morning, the creditor matrix, the top-50  
22 list, the SOFAs, the schedules, these are all documents that  
23 we are required to file, right. Those are documents the  
24 debtors are required to compile and provide and would result  
25 in us affirmatively, with or without their consent, as part



1 of the bankruptcy process, and we understand there are  
2 obligations of the bankruptcy process, to identify the names  
3 of those customers.

4 Ms. Sarkessian referenced the idea, well, nobody  
5 would know. You have all these names. It's a creditor list.  
6 It's not a customer list.

7 Our top-50 list, even the redacted versions that  
8 are on file publicly, do delineate between customers and non-  
9 customer creditors -- trade creditors and customers. And so,  
10 that information, if it were to be unredacted today, people  
11 could see very easily of the top-50 creditors, which of those  
12 are customers, meaning customers who hold accounts on the  
13 various exchanges at FTX.

14 So, the distinction that Your Honor references, we  
15 agree with. Obviously, there's nothing in what Your Honor  
16 would be ordering that would prevent any party from self-  
17 identifying if they so choose.

18 THE COURT: So, is there a -- excuse me -- a way  
19 to delineate between -- you refer to the top-50 creditor  
20 list. That's been sealed in its entirety or redacted in its  
21 entirety, right?

22 MR. GLUECKSTEIN: It has not been redacted in its  
23 entirety, Your Honor. It has been filed in a redacted form  
24 that redacts the information that we asked, and that the  
25 Court authorized, pursuant to the interim order. So, we have

1 redacted names and addresses of individuals and of  
2 institutions who are customers, pursuant to the Court's  
3 interim order and it's reflected as such. But those  
4 documents are on file in redacted form under seal.

5 THE COURT: So, what I'm trying to get at is, is  
6 there a way to delineate on the creditor lists, between who  
7 is a creditor, who is a customer, and who is both, and be  
8 able to disclose those who are solely creditors, publicly,  
9 without disclosing those who are customers and creditors?

10 MR. GLUECKSTEIN: You know, it goes to the  
11 question, it's a question of what information for the full  
12 nine million, of whether that's a meaningful field that  
13 exists or that would have to be kind of independently  
14 reviewed and populated, and I'm not sure of the answer to  
15 that, Your Honor. We'd have to look into that.

16 I think the number, from a volume perspective, is  
17 very small, comparative -- in relative comparison to the  
18 customers. What we've been talking about here, by and large,  
19 and why we've been seeking to protect, when we talk about the  
20 customer list, the customers at the main debtors, at the  
21 exchanges, are where the volume is and that's where we  
22 believe the value is, and that's what Mr. Cofsky testified  
23 about this morning.

24 So, you know, that does implicate, of course,  
25 the 107(c) issues, which we are not pressing today. But I

1 think, you know, we would have to see -- honestly, Your  
2 Honor, we would have to see whether we could make that  
3 delineation for all, kind of non-customer creditors. I  
4 suspect that we could, but I think that would take some work,  
5 but I suspect that we could.

6 THE COURT: Well, in the top-50 lists --

7 MR. GLUECKSTEIN: Certainly, in the top-50 lists,  
8 we have that information.

9 THE COURT: -- are there those who now have been  
10 disclosed, who are solely creditors, not customers?

11 MR. GLUECKSTEIN: Not by name, Your Honor, because  
12 the interim order had the 107(c) relief in it.

13 THE COURT: Okay.

14 MR. GLUECKSTEIN: So, at this point, all of the  
15 names are redacted from that customer list that are subject  
16 to the interim order. So, the relief that we asked for in  
17 the interim order, because it did include the 107(c) relief,  
18 is broader than what we're talking about now.

19 THE COURT: Okay.

20 MR. GLUECKSTEIN: You know, I think on the GDPR  
21 issues, Your Honor, those are certainly secondary here. We  
22 do think it's relevant. We did brief the appropriate  
23 sections. You know, absent questions, we're happy to stand  
24 on the briefing on that issue and, otherwise, I'm happy to  
25 answer any other questions that the Court may have.

1 THE COURT: Thank you, no questions.

2 MR. HANSEN: Your Honor, Kris Hansen with Paul  
3 Hastings, on behalf of the Committee.

4 Just quickly, to address the one point that  
5 Ms. Sarkessian raised regarding 107(c), we do believe those  
6 issues are real and to the extent that the Court wanted to  
7 hear further evidence with respect to 107(c), we would ask  
8 for a continuance of the hearing on that basis, so that we  
9 could come back and provide more robust information to you.  
10 It would consist of information that's available from a  
11 public perspective, so newspaper articles, et cetera, that  
12 you could take judicial notice of, but we, also, would  
13 probably seek to put witnesses on, as well, to talk about  
14 what has happened with respect to criminal and other type of  
15 activity within the crypto space.

16 I don't know, today, whether we would be able to  
17 link that to the disclosure of a name from a bankruptcy case,  
18 but I think we could link it to disclosure of names,  
19 otherwise, that people are able to find out through social  
20 media and other avenues. But I wanted to make sure the Court  
21 understood, procedurally, where from the Committee stands, if  
22 you need information and more information on 107(c), we would  
23 like to have a continuance on that basis.

24 We think the record is very clear on 107(b) that  
25 you have what you need in order to grant the relief that the

1 debtors and the Committee are jointly seeking.

2 THE COURT: Thank you.

3 MR. HANSEN: Thank you, Your Honor.

4 MR. GLUECKSTEIN: Your Honor, if I could just  
5 clarify one point?

6 THE COURT: Go ahead.

7 MR. GLUECKSTEIN: I might have misspoke.

8 So, just to be clear, Your Honor has pointed out  
9 to me in an answer to Your Honor's question, currently, on  
10 our top-50 lists, we have disclosed non-customer names. So,  
11 for example, there are certain vendors at the non-exchange  
12 entities, because we have filed silos -- filed siloed top-50  
13 lists. So, if there was, for example, a vendor providing  
14 services who is a non-customer, that information has already  
15 been disclosed and would be under the relief asked for today.

16 THE COURT: Is that for all creditors, solely  
17 creditors, or just some?

18 MR. GLUECKSTEIN: Yes.

19 THE COURT: For all?

20 MR. GLUECKSTEIN: All.

21 THE COURT: Okay. Thank you.

22 MS. SARKESSIAN: Your Honor, can I just --

23 THE COURT: Go ahead.

24 MS. SARKESSIAN: Your Honor, with that -- for the  
25 record, Juliet Sarkessian on behalf of the U.S. Trustee --

1 Your Honor's questions made me think of something with  
2 respect to the top-50 lists. Of course, you know, we formed  
3 a Committee and I believe all the members of the Committee  
4 were on that top-50 list. Their names were redacted because,  
5 at the time, it was subject to Your Honor's order.

6 Your Honor did indicate at the first -- or one of  
7 the hearings that if somebody is going to be on the  
8 Committee, they have to be willing to have their name  
9 disclosed, and we did file the notice of the appointment with  
10 their names. Since that is now -- and I understood that that  
11 was -- we discussed it with all the Committee members.  
12 Nobody had an issue with that. That has been disclosed.

13 Can the top-50 list be revised, in terms of  
14 redaction, to now unredact the information, with respect to  
15 those particular creditors, whose names have been disclosed?

16 THE COURT: Well, it certainly makes  
17 servicemembers to me. I don't see why it can't be done.

18 MR. GLUECKSTEIN: That can be done, Your Honor.  
19 Frankly, once we have clarity around the scope of what's  
20 staying or not being redacted, we will update the documents,  
21 as appropriate.

22 THE COURT: Okay.

23 MR. GLUECKSTEIN: But we certainly understand that  
24 point.

25 THE COURT: Okay. Thank you.

1 MS. SARKESSIAN: Your Honor, the only other thing  
2 I, again, would emphasize, I am confused about why there  
3 would be another hearing about 107(c). That was in the  
4 initial motion. Everybody knew today was the day of the  
5 hearing on these issues. If they had evidence to present,  
6 they should have presented it, so I would object to a  
7 continuance on that basis. We were ready, willing, and able  
8 to go forward today. Nobody told us in advance that they  
9 wanted a continuance.

10 THE COURT: Well, I understand that and ordinarily  
11 I would say, Yes, today was the day and you need to put on  
12 your evidence. I'm not going to grant any continuances.

13 But we're talking about individuals here who are  
14 not present, individuals who may be at risk if their name and  
15 information is disclosed. And if that is the case, I want to  
16 make sure I'm doing the right thing by those people.

17 MS. SARKESSIAN: I understand, Your Honor.

18 THE COURT: So --

19 MS. SARKESSIAN: Again, I would stress, we are not  
20 objecting to their addresses, email addresses, telephone  
21 numbers being redacted; we're only talking about names.

22 THE COURT: I understand.

23 MS. SARKESSIAN: Thank you, Your Honor.

24 THE COURT: Mr. Hansen?

25 MR. HANSEN: Yes, Your Honor. Again, Kris Hansen,

1 with Paul Hastings on behalf of the Committee.

2           Your Honor, with respect to the individual  
3 creditor names that are on the Committee, the notice that the  
4 U.S. Trustee filed for individuals does not include their  
5 addresses or their information; it just has their names. For  
6 the institutions, it obviously includes their addresses.

7           So, when the debtors make their disclosure with  
8 respect to the top 50 for those parties, we would ask,  
9 consistent with the notice that was filed from the U.S.  
10 Trustee, with respect to their appointment, that we do  
11 maintain that information under seal.

12           THE COURT: Is that an issue?

13           MS. SARKESSIAN: The U.S. Trustee has no  
14 objection. We're in complete agreement.

15           THE COURT: Okay. Thank you.

16           Anyone else?

17           (No verbal response)

18           THE COURT: All right. Well, this case certainly  
19 presents extraordinary circumstances just by the nature of  
20 the case itself. The fact that we have a list of people who  
21 may be customers, may be creditors, may be both, and I don't  
22 know who -- which is which, and they are -- there are nine  
23 million of them, I'm reluctant at this point to say I'm going  
24 to require the disclosure.

25           I think the debtor did put on sufficient evidence



1 to show that customer lists -- and I think it goes without  
2 saying that a customer list in any bankruptcy case is  
3 something that is protected by 107(b) as a trade secret.  
4 Companies hold those things very closely and don't want them  
5 disclosed.

6           The difficulty here is I don't know who's a  
7 customer and who's not, who's just a regular creditor. So,  
8 at this point, I'm going to overrule the objections and allow  
9 them to remained sealed at this point, but I'm not going to  
10 leave it open for six months. I'm going to -- I would  
11 approve an order that extended it for three months. By then,  
12 I think, based on the testimony and the arguments of counsel,  
13 we'll have a better sense of whether or not the customer  
14 lists is something that purchasers of these assets find value  
15 in and whether they are interested in making sure that they  
16 remain anonymous at this point.

17           On the 107(c) issue, as I already indicated, I do  
18 want more on that because I do want to make sure I'm  
19 protecting the interests of these individuals. And it's  
20 interesting, because if you look at 107(a) and -- or excuse  
21 me -- 107(c), it refers to protecting information and  
22 refer -- and -- excuse me -- in defining what identification  
23 means, it refers to the Criminal Code 18 -- Title 18,  
24 Section 128(d). And if you look at 128(d), it says that the  
25 information includes names, numbers, or any combination of

1 those two that would allow the identification of an  
2 individual. So, certainly, the Criminal Code recognizes that  
3 disclosure of a name could result in the identification of an  
4 individual and if that individual needs protecting, we need  
5 to make sure that that is happening.

6 I don't have enough on the record today to say  
7 that 107(c) applies, but I want to make sure that I'm doing  
8 the right thing. So, I will, in connection with any  
9 further -- I guess the question, then, is do I hold that  
10 hearing before the three months is up? And I think in order  
11 to make sure that we have a fulsome record and that the  
12 parties have the opportunity to engage in discovery, if  
13 necessary, to identify people who might come in and testify,  
14 I want to make sure that they have the opportunity. So,  
15 we'll schedule a further hearing on the 107(c), in connection  
16 with the 107(b) follow-up in three months.

17 I do want to make sure that the debtors are, in  
18 compiling the nine million names, if there is a way to  
19 identify them if they are just a creditor and not a customer,  
20 I expect that to be done. And I would like to have a status  
21 conference on that question, alone, within the next -- I  
22 think we have another hearing scheduled on the 20th. So,  
23 let's have a status conference on the 20th on the question of  
24 how difficult it would be for the debtors to provide a list  
25 of creditors and/or customers and distinguish between

1 creditors and customers. And if you can just identify just  
2 customers on the list or, excuse me, just creditors on the  
3 list, I would expect that those names would be disclosed;  
4 again, not disclosing for individual's names -- excuse me --  
5 addresses or telephone numbers or other identifying  
6 information.

7 But if there is -- if there are customers who  
8 are -- I keep confusing these two -- if there are creditors  
9 on that list of nine million who are institutions or  
10 corporations and they are only creditors, then their full  
11 identifying information should be disclosed, as required by  
12 the Code.

13 So, with that, I'm going to ask the parties to  
14 meet-and-confer and come up with a form of order that  
15 reflects what my rulings are today.

16 Are there any questions or did I miss anything  
17 that the parties want me to make sure that I've addressed?

18 MR. GLUECKSTEIN: From the debtors' perspective,  
19 no, Your Honor, that's very clear. Thank you.

20 THE COURT: Okay. Ms. Sarkessian or Mr. Finger,  
21 any concerns, other than the fact that I ruled against you?

22 MR. FINGER: I'll take judicial notice.

23 (Laughter)

24 MR. FINGER: Nothing more, Your Honor.

25 THE COURT: Okay. Thank you.

1 MS. SARKESSIAN: And, Your Honor, I apologize if I  
2 missed it. Did you make a particular ruling regarding  
3 individual creditors who are not customers, but are members  
4 of the U.K. or European Union or Japan?

5 THE COURT: No, I did not address that. That's  
6 another question and that's a difficult one. I don't  
7 think -- I don't have any evidence on that. All I have is  
8 the arguments of counsel.

9 Let's include that when we talk in three months,  
10 because I would like further evidence on that and maybe have  
11 someone come in and testify about the foreign law and how it  
12 affects, but I think, you know, I understand Mr. Finger and  
13 Ms. Sarkessian have pointed out that they don't believe that  
14 the European Code would apply here, but I think even  
15 Mr. Finger recognized that could be argued either way. So,  
16 it's a question, so I'd like to know what the answer to that  
17 question is. Would this actually prejudice the debtors  
18 somehow? If it would subject the debtors to large fines,  
19 and, you know, we've seen all this in the press where  
20 companies in Europe have had large fines imposed against  
21 them. It's certainly not something that I want to have  
22 happen to the debtors here. And it raises questions about  
23 whether I could even stop that. Does the automatic stay  
24 apply to the European Union seeking to impose a fine against  
25 the debtors for violating disclosures? I don't know. So,

1 those are all open issues I need to have further -- might  
2 need further briefing, too, on those issues.

3 MS. SARKESSIAN: And, Your Honor, just for  
4 clarity, so between now and the three months, do those names  
5 remain sealed?

6 THE COURT: Yes, until we -- when we get to the  
7 status conference next Friday, if the debtors can come in and  
8 say, We can provide a list of the nine million names and  
9 identify those that are solely creditors, then I might revise  
10 my order to say that those people's names and identifying  
11 information should be disclosed, except for individuals, at  
12 least with the constitutional creditors.

13 MS. SARKESSIAN: And, Your Honor, maybe another  
14 thing that we maybe could discuss at that status conference  
15 would be to the degree that the debtors aren't able to cull  
16 out which individuals are, in fact, citizens of the U.K., the  
17 EU, and potentially Japan?

18 THE COURT: If that's possible, that would be  
19 helpful, if we know how many people. From my -- I think from  
20 the first day hearing, I think I recollect there was some  
21 testimony in the declaration about how many of these people  
22 are not U.S. citizens; they're foreign citizens. So, it may  
23 be most, if not all of them. I don't think all of them would  
24 be, but at least most of them might be foreign citizens. I  
25 don't know.

1 MS. SARKESSIAN: And, Your Honor, they may be  
2 foreign citizens, but they might be citizens of India or  
3 someplace that's not controlled.

4 THE COURT: Right.

5 MS. SARKESSIAN: I just -- I'm not sure that we've  
6 heard testimony about the debtors' ability to determine  
7 citizenship of its customers. So, again, maybe that's  
8 something that can be discussed at the status conference, do  
9 they have the ability to determine what the citizenship is so  
10 that they can know whether or not to redact the name.

11 THE COURT: Right. I think that's right, yes.

12 MS. SARKESSIAN: Thank you, Your Honor.

13 MR. GLUECKSTEIN: That's fine, Your Honor. We'll  
14 be happy to address that issue at that point.

15 THE COURT: Okay. All right.

16 All right. Well, thank you. Anything else? So,  
17 I'll look forward to the certification of counsel to the  
18 order so far.

19 MR. GLUECKSTEIN: No, I think on that issue, that  
20 is it, Your Honor. We're happy to move forward with the  
21 agenda unless Your Honor would like to address any other  
22 issues?

23 THE COURT: Let me see. Mr. Finger?

24 MR. FINGER: May I be excused?

25 THE COURT: Yes, thank you.

1 All right. Let's go forward.

2 MR. GLUECKSTEIN: All right. Thank you, Your  
3 Honor.

4 I'm going to take one item, if I may, if it  
5 pleases the Court, just Agenda Item 22, slightly out of  
6 order, and then I will turn things over to Mr. Dietderich.  
7 Agenda Item 22, Your Honor, is the debtors' motion to  
8 authorize, provide indemnification, and exculpation on a  
9 final basis to certain individuals taking actions to secure  
10 at-risk cryptocurrency and cash. The motion was filed under  
11 seal prior to -- in connection to the first day hearing at  
12 Docket 95. An interim order was entered at Docket 140 and  
13 subsequently unsealed after a discussion with the Court  
14 recently at Docket 323.

15 Your Honor, there have been no objections filed  
16 with regard to the motion. The debtors have received  
17 informal comments and have had discussions at length with the  
18 United States Trustee and the official Committee.

19 In response to those comments received, the  
20 debtors did file a revised, proposed order last night. The  
21 motion, Your Honor, was filed, as the Court will recall, on  
22 an emergency basis when it became clear in the initial days  
23 of these cases that certain of the debtors' cryptocurrency  
24 and cash assets were at significant risk of being hacked,  
25 stolen, lost, or compromised, if not immediately moved and

1 secured. This required individuals to act quickly, on behalf  
2 of the debtors, to take actions in a difficult environment.

3 Those assets included crypto and other digital  
4 assets that were held or maintained on third-party exchanges,  
5 or in so-called hot wallets, that are not maintained on  
6 third-party exchanges. There were cash assets held in bank  
7 accounts around the world and in certain cases, on third-  
8 party brokerages, where securities and other assets were  
9 being held.

10 I am pleased to report to the Court that very  
11 significant progress, and Mr. Dietderich alluded to this,  
12 this morning, has been made on the work that was done and  
13 necessary for which this motion and an interim order has been  
14 integral, but the work to locate and secure assets remains  
15 ongoing. Transfers of cryptocurrency are subject to certain  
16 inherent risks. Some of those risks are very amplified, here  
17 in these cases, due to the inadequacy of prior controls  
18 before the debtors' current management team got in and put  
19 them in place.

20 As a result, the protection for a limited number  
21 of individuals on the frontline of this work remains  
22 critically important. I do want to note for the record,  
23 based on discussions with the Committee, that the debtors are  
24 okay with the requests from them to be sure that to the  
25 extent there are indemnification payments that ultimately



1 need to be made under the order, that the debtors will seek  
2 payment from any applicable insurance policies and that the  
3 debtors retain all rights of subrogation with respect to  
4 obligations that might arise under this order.

5 I think the Committee is going to want to be heard  
6 on this, as well, but from the debtors' perspective, Your  
7 Honor, we would ask that the order be entered.

8 THE COURT: Okay. Thank you.

9 Mr. Hansen?

10 MR. HANSEN: Yes, Your Honor. Again, Kris Hansen  
11 with Paul Hastings, on behalf of the Committee.

12 Your Honor, that was really our main point, with  
13 respect to the indemnification motion, which is that if  
14 indemnification payments are going to be made, that the  
15 debtor use its best efforts, first, to look to applicable  
16 insurance, which is not only D&O insurance, it's other  
17 professional liability insurance, as well. As the motion  
18 makes clear, they look to include parties in connection with  
19 that who may be covered by their own insurance. And so, we  
20 want to make sure that insurance assets are used to make  
21 those payments, if at all possible, and that if the debtor  
22 needs to advance payments first, that it has subrogation  
23 rights to move against that insurance.

24 Ideally, we would include that in the order so  
25 that it's clear. Obviously, we've all stated it here on the

1 record, so if we could include it in the order, that would be  
2 the Committee's favored approach.

3 THE COURT: Okay. Is there any objection to  
4 revising the order, Mr. Glueckstein?

5 MR. GLUECKSTEIN: No, Your Honor. We're happy to  
6 sit back down the Committee and discuss the order further and  
7 submit an agreed-upon form of order.

8 THE COURT: Okay. Thank you.

9 Was the Committee the only objection on that?

10 MR. GLUECKSTEIN: Yeah, I don't know if the U.S.  
11 Trustee has anything further on this motion.

12 MS. SARKESSIAN: Yes, Your Honor. Again, for the  
13 record, Juliet Sarkessian on behalf of the U.S. Trustee.

14 I believe we have worked out all of our issues  
15 with the debtors on this. I think the only thing I just want  
16 to make clear on the record is the proposed final order will  
17 have an exhibit. The exhibit needs to be filed under seal,  
18 but the order itself, once it gets entered, should -- the  
19 order itself should not be under seal. The exhibit is a list  
20 of people's names that are going to be covered by the order  
21 getting the indemnification and exculpation.

22 We've had some trouble with -- a seal order in the  
23 past got entered under seal, so I just want to make sure that  
24 it's clear that the order, itself, is not under seal, but the  
25 exhibit will be, I guess, right? I think that's what we

1 need.

2 MR. GLUECKSTEIN: That's correct, Your Honor.  
3 We're not looking to seal the order. We've unsealed, now,  
4 with the Court's permission, the interim order.

5 Ms. Sarkessian is correct, we will, and we have,  
6 in fact, filed under seal, already, the list of names that's  
7 contemplated -- that is contemplated to be attached to the  
8 order. And so, when we submit the final order for Your  
9 Honor's review and signature, the order, then, would be on  
10 the docket, but the exhibit to that order would remain filed  
11 under seal.

12 THE COURT: Okay. That's fine. I did see that  
13 list already. I saw it this morning.

14 MR. GLUECKSTEIN: Thank you, Your Honor.

15 THE COURT: All right. So that one, again, will  
16 be submitted under COC?

17 MR. GLUECKSTEIN: Yes, once we agree on the  
18 additional language with the Committee, we'll submit that  
19 under COC.

20 THE COURT: Okay. Thank you.

21 MR. GLUECKSTEIN: And with that, Your Honor, I  
22 will cede the podium to Mr. Dietderich to address cash  
23 management.

24 THE COURT: Okay.

25 MR. DIETDERICH: Hello, again, Your Honor. For

1 the record, Andy Dietderich, Sullivan & Cromwell, for the  
2 debtors.

3 I have Docket 21, the cash management order. Your  
4 Honor, on this one, all objections have been resolved, in our  
5 view, other than one objection from the U.S. Trustee. Before  
6 addressing that objection, I wanted to -- I have a sentence  
7 to read into the record and a couple general points to the  
8 Court. I also want to talk about the evidentiary record here  
9 for just a moment.

10 From the debtors' perspective, we believe the U.S.  
11 Trustee has an objection that's a pure point of law, which is  
12 about whether or not the Court has authority to grant  
13 superpriority status to claims against the cash management  
14 system. I do not believe her objection goes to the  
15 reasonableness of that decision and we do have a record, of  
16 course, for the reasonableness of the cash management system  
17 from Mr. Mosley's prior declaration, which is on the docket  
18 from the interim hearing.

19 So, I'd like to go ahead and proceed on that  
20 assumption, but to the extent that Ms. Sarkessian does have  
21 an objection to the reasonableness of the cash management  
22 procedure, we do reserve the right to call Mr. Mosley, put  
23 him on the stand, and ask him a few questions.

24 THE COURT: Why don't we find out before we go?

25 MS. SARKESSIAN: Your Honor, it's a pure legal

1 argument. I'm not making any argument about the  
2 reasonableness of any decision that the debtors have made in  
3 this regard, just whether it's permissible under the Code.

4 THE COURT: Okay. Thank you.

5 MR. DIETDERICH: Okay. Thank you, Ms. Sarkessian.

6 On that basis, Your Honor, the evidentiary record  
7 here is we're relying on is the declaration of Mr. Mosley in  
8 support of first day relief, Docket 57; his supplemental  
9 declaration, Docket 93; and although we're not relying on it  
10 for evidence, for the Court's information, there is a second  
11 supplemental declaration of Mr. Mosley, last evening, which  
12 is generally applicable with the 13-week cash forecast, and  
13 that's at Docket 460.

14 So, Your Honor, we have, in order to resolve the  
15 objection from Evolve Bank, which is one of the banks where  
16 we have accounts that are nominally recorded as FBO accounts,  
17 we have a little bit of language to read into the record.  
18 So, in paragraph 13 of the form of order, where it speaks  
19 about the rules for closing FBO accounts, we have committed  
20 with Evolve that we will not close the accounts at their bank  
21 without notice and a further order of the Court. And so, we  
22 will be submitting a revised form of order where the language  
23 that will make that clear and we have text that we've worked  
24 out with counsel to Evolve.

25 Second, Your Honor, we have some objections from

1 shareholders. So, a couple of shareholders have surfaced,  
2 represented by our friends at Debevoise, and they've reviewed  
3 this order. They have, I believe, an objection or a  
4 reservation of rights, one or the other, one file. And we've  
5 worked out with them that we've made some commitments to them  
6 to share information informally, that they've accepted, and  
7 on that basis, I believe their objection is resolved.

8           With respect to the overall motion, Your Honor,  
9 this is really the same cash management system that we  
10 proposed earlier, so there's been no substantial change to  
11 the management system we're proposing going forward, with one  
12 exception. During the interim period, we had some gates on  
13 the ability to move, to make advances from silo to silo.  
14 There was a hard cap on the movement of money from silo to  
15 silo.

16           We've had a number of discussions with the  
17 Committee about what the right approach is to this case, in  
18 terms of movement of money in the cash management system  
19 across silos and we've agreed with them on a flexible  
20 procedure where we will use a budgeting and projection  
21 process and involve them periodically in that process. And  
22 to the extent that we agree that it's appropriate and prudent  
23 to move money from the silos, we're permitted to do that  
24 under the cash management system and our business judgment  
25 with the committee's involvement.

1           However, to the extent that the Committee  
2 disagrees, either with the projections about amount of silo  
3 movement or we have variances from time to time that are  
4 larger than beyond a certain cap, in that circumstance, the  
5 Committee can come back to Your Honor on an accelerated  
6 schedule with an objection.

7           And we think that's an appropriate basis. You  
8 know, we will be moving money between the silos, only to the  
9 extent that we think this obviously creates a reliable,  
10 administrative claim. We have substantial, unencumbered  
11 asset value at all of the silos. The question might just be,  
12 really, a question of working capital, until we're able to  
13 monetize some of the assets and some of the pockets that we  
14 have.

15           There's been no objection, Your Honor, that goes  
16 to that mechanism. The objections that we've resolved went  
17 to more of question, should we charge interest and how should  
18 the mechanics of the details work?

19           So, with that, Your Honor, I'll turn to the  
20 remaining objection that we have, which is the objection of  
21 the U.S. Trustee on the legal question of whether or not Your  
22 Honor has the authority to grant superpriority status to  
23 advances under a cash management system. There's not a lot  
24 of case law that will be helpful to us on this point. I  
25 think we have a reading of the Bankruptcy Code that says that

1 which is not prohibited by the Bankruptcy Code, and we have  
2 an evidentiary basis of reasonableness for, Your Honor can  
3 award under 105.

4           We also think for the reasons that we put in the  
5 papers, which I don't need to rehearse, that the proper  
6 allocation of risk in a system with many debtors between  
7 administrative creditors, so it's really a question of  
8 allocation of risks among different administrative creditors  
9 in a common system, that if the advances by the cash  
10 management pool are given the superpriority status, the  
11 consequence of doing so is that the first loss if there was a  
12 problem, and heaven forbid, we don't expect there to be a  
13 problem, but if there ever was a problem anywhere in part of  
14 our system, the superpriority protects the cash management  
15 system and the other debtors against a localized problem and  
16 it allocates, first, administrative loss to the  
17 administrative creditors of that particular debtor.

18           The converse rule, a rule that says it was an  
19 ordinary administrative advance, the problem with that rule  
20 in our mind is that it, then, socializes any loss, any  
21 administrative loss among administrative creditors in our  
22 case, all over the world. And so, this superpriority status  
23 for administrative advances, we believe, is consistent with  
24 the approach that had been taken by the debtors that have  
25 really thought it through in the complicated cases, in



1 particular, cross-border cases. It's consistent with the  
2 way -- and, again, without evidence on this, Your Honor, but  
3 from -- I'll speak, just informally, from personal  
4 experience -- it's the way international companies think  
5 about cash management, making sure the system is protected,  
6 as opposed to any particular arm of the organization, and we  
7 believe it's the reasonable approach, you know, on the facts  
8 of our particular case.

9           In terms of the pure legal issue, we see nothing  
10 in the Code that prohibits Your Honor from doing it. The  
11 U.S. Trustee, in respect to the argument, says there's only  
12 two circumstances where superpriority expense can be awarded  
13 by a debtor and we think those are two circumstances --  
14 excuse me -- where the Code contemplates it, but it -- it's  
15 not otherwise permitted. And to the extent we do so on the  
16 record, so that all of our administrative creditors know that  
17 the advances have superpriority status, we think there's  
18 adequate notice to do it. In some ways, the greater power  
19 implies the lesser. We should be able to incur  
20 administrative debt at one of our subsidiaries on the  
21 understanding that the person we're dealing with knows that  
22 advances against the cash management system do have a  
23 priority.

24           Now, the last thing I'll say, Your Honor, is this  
25 doesn't come up super often because of DIP financing and the

1 arrangements of DIP financing often supercede this, and it's  
2 embedded in the cash management system that's somewhat  
3 connected, at least, to the DIP loan. Here, we don't have a  
4 DIP loan, so there's a little bit more attention on the  
5 question, but those are my remarks on it and I'm happy to  
6 cede the podium to Ms. Sarkessian and she can give you the  
7 contrary view. Thank you.

8 THE COURT: Thank you.

9 I think the Committee wants to weigh in first.  
10 Hold on one second. We have a -- I want to make sure --

11 (Pause)

12 THE COURT: The Zoom video went out? They can  
13 still hear me, though?

14 (Pause)

15 THE COURT: That means everybody else has to dial  
16 back in?

17 (Pause)

18 THE COURT: A technical glitch.

19 MR. DIETDERICH: I hope it's nothing I said.

20 THE COURT: It happened when you stood up. I  
21 don't know.

22 (Laughter)

23 THE COURT: All right. Unfortunately, we have to  
24 have IT come up and take a look at what's happening here.  
25 So, let's take a recess until we can get this resolved,

1 hopefully, pretty quickly. Just let me know when we're  
2 ready.

3 All right. We'll recess until we get this fixed.  
4 Thank you.

5 (Recess taken at 12:17 p.m.)

6 (Proceedings resumed at 12:40 p.m.)

7 THE COURT: Okay. Ready to go.

8 MR. GILAD: Good afternoon, Your Honor. Erez  
9 Gilad, Paul Hastings, LLP, proposed counsel to the official  
10 Creditors' Committee.

11 Your Honor, I rise only to make some comments,  
12 with respect to the cash management motion. We, as a  
13 Committee, support the cash management and wanted to describe  
14 to the Court that we have spent a fair amount of time  
15 negotiating and improving the terms of the cash management  
16 order.

17 Our approach to the cash management system in the  
18 proposed form of order was to facilitate the use of a  
19 centralized cash management system, which all else being  
20 equal, is rather common to complex corporations of this size,  
21 but at the same time, reflecting the realities of the case,  
22 preserving parties' rights, with respect to assets of the  
23 debtors, offering visibility into movement of cash, and  
24 enacting appropriate safeguards for the benefit of the  
25 debtors' estates.

1           To that end, as counsel indicated earlier, we did  
2 negotiate an extensive regime of reporting, that is weekly  
3 and monthly reporting, delivery of monthly budgets of various  
4 tests, intercompany reconciliation reports as well,  
5 consultation rights, and opportunities for the Committee to  
6 step in and seek relief before the Court, if there are  
7 certain objections to either, to the budget or any  
8 disbursements that sought in excess of a 10 percent variance.  
9 There's also a negotiated result with respect to imposing a  
10 cap on transfers to nondebtors.

11           We think, all in, these provisions strike the  
12 appropriate balance between assuring the proper movement of  
13 cash and the efficient administration of the case, which,  
14 frankly, benefits all constituents, but also affords  
15 appropriate protection to the debtors' estates. And it's  
16 important to note that as part of the negotiated result, we  
17 did incorporate language into the cash management order which  
18 provides a fulsome reservation of rights for the benefit of  
19 parties, with respect to entitlements regarding customer  
20 funds, and also a fulsome reservation of rights with respect  
21 to the rights to assert whatever rights or remedies they  
22 have, notwithstanding the silo creation, and notwithstanding  
23 the movement of cash between accounts and between silos. So,  
24 we thought that that was similarly important for the benefit  
25 of constituents in the case both, customers and creditors

1 alike.

2           From the perspective of the legal issue that's  
3 been presented in terms of the admin priority versus  
4 superpriority, obviously, the debtors' intent here is to  
5 ensure that to the extent that there is movement of cash,  
6 that the appropriate estates are protected. In terms of the  
7 superpriority status, again, our perspective there is that  
8 the debtors' view is that it's simply additive protection for  
9 the benefit of the transferor estate.

10           It's my understanding that from a process and  
11 notice perspective, at least, I believe that the interim form  
12 of order included the establishment of a superpriority claim,  
13 with respect to the transferor estate, so I view it from that  
14 perspective, I think it's been on notice now, for purposes of  
15 the second day hearing, that that relief would be requested.  
16 So, I think that notice, coupled with the comments made by  
17 counsel that we don't believe that there's any prohibition  
18 against the Court affording superpriority status, we support  
19 the relief requested by the debtors.

20           Unless Your Honor has any questions, I believe  
21 that's all I have to say.

22           THE COURT: All right. Thank you. No questions,  
23 thank you.

24           MR. GILAD: Thank you, Your Honor.

25           THE COURT: Okay. Let's see. We have another

1 speaking in support of?

2 MR. LEVINSON: In support, yes, Your Honor.

3 THE COURT: Okay. Go ahead.

4 MR. LEVINSON: Good morning. Sidney Levinson,  
5 Debevoise & Plimpton, for Paradigm operations.

6 Paradigm is a substantial stakeholder in these  
7 bankruptcy cases, including about 280 million of equity  
8 investments in two of the silos, West Realm Shires and FTX  
9 Trading Ltd.

10 We've heard Mr. Gray and others take aim at the  
11 poor recordkeeping of the debtors prior to the bankruptcy  
12 filing, and we recognize that the process of identifying the  
13 assets and the liabilities of each debtor, as well as the  
14 prepetition intercompany claims and relationships that exist  
15 among them is very much a work in progress. I mean, it's  
16 fair to say none of us really know at this moment how all of  
17 that is going to shake out, but given that state of affairs,  
18 it's absolutely vital for all stakeholders to be able to  
19 preserve the status quo as of the petition date to the  
20 fullest extent possible and to maintain the separateness of  
21 the various debtor entities to the fullest extent possible so  
22 that each of the individual debtors and their respective  
23 stakeholders aren't prejudiced by anything that's going to be  
24 happening during the bankruptcy cases.

25 The cash management order, obviously, has some

1 impact on that status quo and, accordingly, there need to be  
2 protections implemented to minimize that threat.

3 We engaged in informal discussions, we did also  
4 file a limited objection, but those informal discussions have  
5 been ongoing with the debtors for several weeks to address  
6 our concerns and in fact the revised form of order includes  
7 many of the suggestions that we had made with respect to the  
8 form of order. And given that, as well as the commitments  
9 that Mr. Dietderich referred to in his comments, Paradigm is  
10 withdrawing its remaining objections.

11 I would, if I may, Your Honor, just like to be  
12 heard briefly on the United States Trustee's limited legal  
13 objection because the inclusion of super-priority claims is  
14 fundamental to our support of the current cash management  
15 order in its current form.

16 Now, contrary to their position, I would submit  
17 that the Bankruptcy Court does in fact authorize, expressly  
18 authorize the grant of the super-priority claim and I think  
19 that express authority can be found in Section 363(e), which  
20 governs the use of property in which an entity has an  
21 interest. If I can indulge Your Honor just to read from  
22 363(e): "Notwithstanding any other provision of this  
23 section, at any time, on request of an entity that has an  
24 interest in property used, sold, or leased, or proposed to be  
25 used, sold, or leased, by the trustee, the Court, with or

1 without a hearing, shall prohibit or condition such use,  
2 sale, or lease as is necessary to provide adequate protection  
3 of such interests."

4           Now, here, the debtors and non-debtors whose funds  
5 are being used have an interest in these proceeds and are  
6 entitled to request a grant of adequate protection from the  
7 debtors that are in fact receiving those proceeds or the  
8 benefit of those proceeds. Section 361 authorizes the grant  
9 of adequate protection in many forms, including the  
10 realization of the indubitable equivalent of an interest in  
11 such funds.

12           And one thing that 361 makes clear is that a mere  
13 administrative expense priority is not sufficient by itself  
14 to provide adequate protection. Thus, we would submit a  
15 super-priority claim is the bare minimum that would be  
16 required to provide adequate protection and, indeed, if it  
17 turns out that any form of adequate protection turns out to  
18 be insufficient, the entity advancing such funds would be  
19 entitled to a super-priority claim under Section 507(b).

20           So we think the United States Trustee's limited  
21 objection is misplaced not only for all the reasons outlined  
22 by the debtors in their paper and by Mr. Dietderich today,  
23 but also by that provision as well, and that this Court does  
24 in fact have the authority to grant super-priority claims and  
25 we respectfully request that Your Honor approve that



1 provision.

2 Unless Your Honor has any questions --

3 THE COURT: No questions. Thank you, Mr.

4 Levinson.

5 MR. LEVINSON: Thank you.

6 MR. WORALDEIN: Good afternoon, Your Honor, Elie

7 Woraldein, Debevoise & Plimpton, a separate Debevoise &

8 Plimpton team, on behalf of certain Lightspeed Funds, here

9 together with our co-counsel Cole Schotz.

10 I'll be very brief, Your Honor, because I don't  
11 want to repeat a lot of the points that were raised by  
12 Paradigm, as well as the committee. Our interests and the  
13 concerns that Paradigm Lightspeed had are very similar to the  
14 concerns of the committee, as well as the concerns of  
15 Paradigm.

16 But, very briefly, as noted in our reservation of  
17 rights, which is Docket Number 389, Lightspeed Funds are  
18 substantial equity holders in several of the debtor entities.  
19 Based upon the debtors' public filings and statements thus  
20 far in the case, the debtors have acknowledged that certain  
21 FTX entities in the WRS silo, as well as certain other  
22 entities, are solvent.

23 So, as noted in our brief, Lightspeed -- the  
24 Lightspeed Funds' concerns were that it's imperative in this  
25 case to preserve the status quo, for all of the reasons noted

1 by Paradigm's counsel just a moment, that it's imperative to  
2 maintain corporate formalities and preserve the status quo,  
3 especially at this early stage of the Chapter 11 case, and we  
4 must do that to the greatest extent possible in order to  
5 ensure that the rights of legitimate stakeholders are  
6 preserved. Lightspeed was concerned that the original motion  
7 and proposed order as originally drafted -- the debtors were  
8 able to transfer funds from debtor entities to non-debtor  
9 entities and vice versa and that's how they were intending to  
10 fund these Chapter 11 cases, the concern of Lightspeed was  
11 that those initial proposals didn't have sufficient  
12 safeguards to protect the interests of those solvent debtor  
13 entities, as well as the various stakeholders of those debtor  
14 entities and, therefore, the original proposed order left a  
15 substantial risk that solvent FTX entities will be funding --  
16 seeing their cash being used to the benefit of other debtor  
17 entities.

18           And this wasn't only a concern of the Lightspeed  
19 Funds, this is a concern that all stakeholders -- as, you  
20 know, the committee noted as well that it's important that  
21 different stakeholders, obviously, have different claims  
22 against different legal entities, so it's imperative to  
23 preserve and maintain corporate formalities in order to  
24 ensure that each stakeholder against the individual debtor  
25 entity could preserve the status quo of whatever cash or

1 rights or assets they have.

2           As noted earlier, we're happy to report we have,  
3 in light of the revisions to the proposed order, most  
4 importantly, the grant of the super-priority claim, as  
5 discussed earlier -- and I won't repeat those legal arguments  
6 that were already mentioned -- we believe that they will  
7 satisfy Lightspeed Funds' concerns at this time and we're  
8 going to withdraw our reservation of rights and any  
9 outstanding concerns in light of the extensive back-and-forth  
10 arm's length discussions we've had with FTX's counsel over  
11 the last few weeks.

12           However, we will note just for the record that  
13 we'll continue to monitor these cases carefully, especially  
14 in light of the reservation of rights for the various issues  
15 in the proposed order, namely interest, allocation of  
16 expenses, and some of the other points, which are all issues  
17 that are reserved for later in the Chapter 11 case, but the  
18 Lightspeed Funds will maintain careful monitoring of the case  
19 just to ensure that the debtor entities are maintaining  
20 corporate formalities, transparency, as we heard earlier in  
21 the hearing, the key of tracing and monitoring all the cash  
22 flows during the Chapter 11 case just to ensure that no  
23 specific debtor entities and their various stakeholders are  
24 prejudiced at the expense of other debtor entities.

25           So, unless the Court has any questions, that's all

1 I intended to add to the record.

2 THE COURT: Okay. Thank you --

3 MR. WORALDEIN: Thank you.

4 THE COURT: -- no questions.

5 Anyone else in support?

6 (No verbal response)

7 THE COURT: Okay. Ms. Sarkessian?

8 MS. SARKESSIAN: Again, Juliet Sarkessian on  
9 behalf of the U.S. Trustee.

10 Your Honor, the -- as Your Honor is of course well  
11 aware, the priority scheme of the Bankruptcy Code is a key  
12 part of the Bankruptcy Code, it is crucial and it's set forth  
13 under 507. There are only two grounds in the Code where  
14 super -- we call it super priority, it's an administrative  
15 claim that has priority over all other administrative claims,  
16 there's only two places in the Code that provide for that,  
17 one is under 364(c) in connection with DIP financing and the  
18 other is under 507(b) for adequate protection of prepetition  
19 liens.

20 So now Counsel for Paradigm had just argued that  
21 super priority could be granted under 3 --

22 THE COURT: You might need to lower the microphone  
23 some.

24 MS. SARKESSIAN: Oh, I'm sorry, yeah. Thank you,  
25 Your Honor.

1           On the super priority, it could be allowed under  
2 363(e), but if you -- and it does talk about adequate  
3 protection there, but if you turn back to 507(b) -- and  
4 507(b) does reference 363 -- it says, if under 362, 363, or  
5 364 of this title, if the trustee provides -- or, of course,  
6 debtor-in-possession -- provides adequate protection of an  
7 interest of a holder of a claim secured by a lien on property  
8 of the debtor. So it is limited to that, there must be a  
9 lien. So I don't think that -- it's my understanding that  
10 the transfers we're talking about here between debtors or  
11 between non-debtor affiliates to debtors are not going to be  
12 secured by a lien and certainly not on a prepetition lien.

13           So the debtors' argument -- and other parties have  
14 argued that, well, just because the Code points out two  
15 places that allow for super priority claims does not mean  
16 that super priority claims are otherwise prohibited.

17           The priority -- again, the priority of claims  
18 under the Bankruptcy Code is a key portion of the Code. And  
19 so when the Code says there's two places where you get a  
20 super priority claim and there's no other provision where you  
21 could say, all right, well, this -- you know, maybe under  
22 this one, and that's it, that is it. Otherwise, what you  
23 come up with is, well, then what's the standard for super  
24 priority claims? I mean, we know it would of course have to  
25 be a post-petition claim, but then what's the standard? Is

1 it just whatever the debtor thinks should be a super priority  
2 claim?

3 I've heard talk about, well, there was plenty of  
4 notice. If there's no statutory authority to grant something  
5 under the Code, then giving people notice about it doesn't  
6 resolve that problem. It's great to give parties notice, but  
7 you have to have a statutory provision to hang your hat on.

8 Again, what are the parameters, who decides and  
9 what are the parameters of other super priority claims that  
10 are not referenced in the Code? You know, here, what the  
11 debtor is saying is it's basically elevating claims between  
12 themselves and non-debtor affiliates into the debtor, that  
13 those claims are being elevated over claims of ordinary post-  
14 petition vendors and service providers. They're the ones  
15 that are being effectively -- they're having their claims  
16 subordinated, effectively, without, again, there being  
17 anything in the Code to provide for that.

18 And the other problem is, is when you start  
19 expanding super priority to cover other things that are not  
20 specified in the Code, eventually, it becomes meaningless  
21 because, you know, everybody is going to get super priority.  
22 I mean, for example, if you say, well, maybe you view these  
23 transfers between the debtors as post-petition DIP financing,  
24 in which case please file a motion to get that approved, but,  
25 well, then one could say that a vendor -- if a vendor is

1 selling goods on 30-day terms, that's giving the debtors  
2 post-petition credit, do they get a super priority claim? I  
3 mean, where does it stop? Because if everybody gets super  
4 priority, then super priority is completely meaningless.

5 And, you know, somebody had said this is usually  
6 not an issue because usually there's DIP financing, under the  
7 Code, they get super priority, and that's the end of it.  
8 They're not going to share super priority with, you know,  
9 inter-debtor transfers, you know, we don't have that here,  
10 but that doesn't mean -- just because we don't have a DIP  
11 financier, it does not mean a super priority status can be  
12 given without authority under the Code just because it's  
13 convenient for the debtors or because they gave notice to  
14 parties.

15 And, you know, as we mentioned in our objection, I  
16 mean, here there is -- I guess I would say it's somewhat  
17 ironic that -- you know, I've been told by debtors' counsel  
18 that the majority of these transfers between debtors are  
19 going to be loans from the Alameda Silo to the dot.com silo.  
20 That is not in the motion. The motion actually has very  
21 little information about what these transfers are and why  
22 they're needed or the amounts or anything. That's what I was  
23 told, I assume that's true. And, of course, we have no  
24 prepetition allegations of money from customer accounts in  
25 the dot.com silo being rated and sent to Alameda. Now,

1 Alameda is going to be lending money to the dot.com silo and  
2 getting super priority status. There's something that's, I'd  
3 say, troubling about that.

4           And I understand that there's reservation of  
5 rights, you know, put in the order so that if later on it's  
6 determined that money that's -- that Alameda has really  
7 belongs to customers of other debtors, you know, that those  
8 rights are reserved, but, again, elevating those types of  
9 transfers from the Alameda silo to the dot.com silo over  
10 ordinary course professionals -- not professionals, excuse me  
11 -- well, actually, they are elevated over ordinary course  
12 professionals as well. And the professionals are here and if  
13 they want to voluntarily subordinate their claims, then  
14 that's fine, they can do that, somebody can consent to that,  
15 but there's certainly no evidence that the numerous -- I'm  
16 assuming numerous vendors and service providers to these  
17 debtors post-petition have agreed to have their claims  
18 subordinated to claims between the debtors or claims from  
19 non-debtor affiliates to the debtors that take place after  
20 the petition date.

21           THE COURT: Well, isn't there protections built in  
22 to avoid the issue of Alameda loaning money to the dot.coms  
23 and the question being, well, is the money that Alameda is  
24 loaning belong to somebody else, and that's being preserved,  
25 right? I mean, the only thing that the super priority claim



1 will do is make sure that any money loaned goes back to  
2 Alameda and then the question of whether that money actually  
3 belongs to Alameda, or some of the other debtors or customers  
4 or whatever the case may be, is something that can be decided  
5 at a later time?

6 MS. SARKESSIAN: Yes, Your Honor, it is my  
7 understanding that that is being preserved, but it does not  
8 -- it doesn't address the issue of not having statutory  
9 authority to expand super priority claims beyond what is  
10 specified under the Code.

11 THE COURT: Okay, I understand your point.

12 MS. SARKESSIAN: Unless Your Honor has any further  
13 questions, that concludes my argument.

14 THE COURT: Okay. Thank you, Ms. Sarkessian.

15 MR. DIETDERICH: Thank you, Ms. Sarkessian.

16 Very briefly, Your Honor, Andy --

17 THE COURT: You might need to raise the  
18 microphones back up again just to make sure --

19 MR. DIETDERICH: Sure, sorry. Understood,  
20 understood. We should leave one low and one high, maybe.

21 Your Honor, just very, very briefly. One factual  
22 correction is we're talking about liabilities to the cash  
23 management system, under no circumstances are we granting  
24 super priority status to a claim by a non-debtor. So even a  
25 non-debtor subsidiary won't have super priority status under

1 the cash management system; this is for inter-debtor advances  
2 only.

3           The only other thing I'd say is that there's lots  
4 -- you know, practical arguments about this. I think the  
5 question before the Court is whether Your Honor has authority  
6 to grant super priority status. And, again, I submit that,  
7 with respect to Ms. Sarkessian's position, there's no case  
8 cited that you don't have the authority, there's no case  
9 cited for the reading of the Bankruptcy Code that says that,  
10 in the absence of a specific reference to super priority, you  
11 can't grant super priority status, and there's no case cited  
12 for her particular reading of 105, despite lots of  
13 jurisprudence about how 105 is applied to circumstances where  
14 the Code is, as it is in so many things in our practice,  
15 silent on a particular practical issue.

16           Congress did not think about the question of how  
17 to run intercompany cash management systems in a multi-  
18 jurisdictional debtor. I can assure you without having to  
19 look to it, we're not going to find that in the legislative  
20 history of the Bankruptcy Code. But what it did do is it  
21 gave the debtors discretion, put a creditors committee in  
22 charge to oversee us, and gave Your Honor the authority  
23 where, if something is not prohibited by the Code under 105  
24 and consistent with what needs to be done in a case, to issue  
25 the relief on that basis.

1 I think there is an interesting argument whether  
2 you would have authority under 363(e) to do it as adequate  
3 protection for a use of property of one debtor by another  
4 debtor, and whether a debtor is an entity within the meaning  
5 of 363(e). We didn't make that argument; I think it's an  
6 interesting argument. I think we're just standing under  
7 basic 105 authority and we think that's sufficient.

8 THE COURT: Okay. Thank you.

9 MS. SARKESSIAN: Your Honor, if I could just  
10 address this one factual issue. I'm looking at the proposed  
11 final order that was given to me last night that I'm not sure  
12 if it's been filed yet, but the language says the net post-  
13 petition liabilities at any time, from any debtor to any  
14 other debtor -- and then they go silo pooling account -- and  
15 then they have from any non-debtor affiliate to any debtor  
16 under the post-petition cash management system shall be  
17 entitled to super priority. That's paragraph 5.

18 So, if that's wrong, we can change that, but I'm  
19 reading that to say transferred from a non-debtor affiliate  
20 to a debtor gets super priority.

21 MR. DIETDERICH: Ms. Sarkessian, thank you. Let  
22 me look, a quick look.

23 (Pause)

24 MR. DIETDERICH: I think that's correct, I think  
25 that is wrong. That speaks to an obligation nonsensically

1 from a non-debtor to the system having super priority status,  
2 which is an overdraft. Obviously, you can't award super  
3 priority status to the obligations of a non-debtor because  
4 you don't have authority over the non-debtor.

5 So that can be -- that's --

6 MS. SARKESSIAN: That can be taken out?

7 MR. DIETDERICH: -- an excellent catch and we can  
8 fix that in the form of the order, and thank you very much  
9 for that.

10 MS. SARKESSIAN: At least my work is worth  
11 something.

12 MR. DIETDERICH: It's worth a great deal.

13 (Laughter)

14 MR. DIETDERICH: And that's not -- and, for the  
15 record, that is by far not Ms. Sarkessian's only very good  
16 catch in our documentation.

17 THE COURT: Oh, I know. She catches a lot of  
18 stuff.

19 MS. SARKESSIAN: Thank you, Your Honor. Well, I'm  
20 glad we were able to say that.

21 THE COURT: All right. Okay. Well, the only  
22 question is whether I have the authority to grant super  
23 priority status under 105 and I think that I do. It's not an  
24 issue that has, obviously, come up in the past because there  
25 is no case law on it, but a number of courts have entered

1 them in situations such as this.

2 And, again, we have an unusual situation here.  
3 There's no DIP financing, the debtors are operating on their  
4 -- whatever cash they have available, and some might not have  
5 the cash to do it. And so I think this is consistent with  
6 105, to the extent that 105 is intended to provide the Court  
7 with the ability to fashion resolutions where the Code might  
8 not provide a specific resolution, but it's necessary to  
9 protect the interests of the constituencies involved in the  
10 case. And, here, I have all of the constituencies agreeing  
11 that this is good for the case and good for their individual  
12 constituencies.

13 So I will overrule the objection and will enter  
14 the order subject to the revisions. And you can work with  
15 Ms. Sarkessian and, again, submit this under COC once you  
16 have a revised form of order.

17 MR. DIETDERICH: Thank you, Your Honor.

18 I think the last -- not the last -- I'm sorry, if  
19 you could just give me a second.

20 (Pause)

21 MR. DIETDERICH: The last motion for Your Honor to  
22 consider today is the bidding procedures motion, Docket 24.  
23 I was going to say last, but we also of course have the  
24 status conference on schedule -- or the scheduling  
25 conference.

1 THE COURT: Okay.

2 MR. DIETDERICH: So, Your Honor, the bidding  
3 procedures motion, before we start here, we do have an  
4 evidentiary record on bidding procedures today. There are  
5 two declarations to move into evidence. The first is a  
6 declaration of my partner Brian Glueckstein at Docket 412.  
7 This is simply putting in front of the Court the privacy  
8 policies for the various debtors. And, again, Ms. Sarkessian  
9 can confirm, but I do not believe we have an objection on  
10 anything that goes to the consumer ombudsman issue -- if I'm  
11 saying that correctly, ombudsman, I've always had trouble  
12 with that word.

13 THE COURT: Ombudsman, I believe.

14 MR. DIETDERICH: Ombudsman. The -- I believe that  
15 the consensus is that no ombudsman is required in the case,  
16 but Ms. Sarkessian can confirm.

17 And so I would just ask to move the declaration of  
18 Mr. Glueckstein into evidence.

19 THE COURT: Okay. Is there any objection?

20 (No verbal response)

21 THE COURT: It's admitted without objection.

22 (Glueckstein declaration received in evidence)

23 MR. DIETDERICH: The second is the declaration of  
24 Kevin Cofsky, who we heard from earlier, at Docket 413, and  
25 I'd like to move that into evidence at this time as well.

1 I think Ms. Sarkessian may have a comment about  
2 that declaration.

3 THE COURT: Okay.

4 MS. SARKESSIAN: For the record, Juliet Sarkessian  
5 on behalf of the U.S. Trustee.

6 I object to the provision -- well, the statements  
7 in paragraph 17 of Mr. Cofsky's declaration concerning bid  
8 protections. He addresses -- you know, he gives an opinion  
9 that certain bid protections are, you know, common, et  
10 cetera. No -- the Court is not -- nobody is asking the Court  
11 to approve bid protections at this time. This is not  
12 relevant. We would ask that this -- there may be something  
13 else in paragraph 17 that doesn't relate to bid protections  
14 and I don't object to that, but anything relating to his  
15 opinion or his testimony about bid protections, we would ask  
16 that it be stricken at this time, you know, without prejudice  
17 if they want to submit that, if later on the debtors are  
18 requesting bid protections, and there is a procedure --  
19 within the proposed bid procedures order, there is a  
20 procedure whereby they can do that if they find a stalking  
21 horse. At that time, if they want to put in -- and, in fact,  
22 we would say they would need to put in evidence to support it  
23 -- they can do that at that time.

24 THE COURT: Okay. Mr. Dietderich?

25 MR. DIETDERICH: Your Honor, Andy Dietderich. We

1 disagree. We think Mr. Cofsky's paragraph has actually been  
2 drafted with respect to the basic situation, which is that we  
3 are neither approving a sale nor the grant of stalking horse  
4 protections today. However, we are publicly announcing to  
5 the world that bidding protections, stalking horse  
6 protections are available. And, in addition, we're  
7 shortening the notice period for people to object to those  
8 stalking horse protections.

9           So Mr. Cofsky's declaration is not intended to  
10 prejudice anybody's ability to argue that bidding protections  
11 given to a particular bidder in any circumstance are  
12 unreasonable or inappropriate. What they say is that, based  
13 on his experience with bidding procedures generally, bidding  
14 protections, as reflected in what we're doing publicly, are  
15 appropriate and customary for sale transactions of this type  
16 and in amounts that are reasonably and generally consistent  
17 with such amounts in comparable circumstances. He's not  
18 saying that as applied to the facts of any particular bidder  
19 or situation that they will be reasonable, but they're  
20 reasonable generally.

21           In addition, he's saying that having this publicly  
22 helps, quote, the ability to attract a prospective stalking  
23 horse bidder by offering the bidding protections.

24           So it helps us as the debtor to have a banker who  
25 has expertise in this area be able to say to anybody who



1 might be interested in putting forth a stalking horse bid  
2 that, generically, this kind of stalking horse protection is  
3 reasonable and customary for the circumstances. We will not  
4 be making any assurances to a bidder that bidding protections  
5 will be granted to them in the particular facts of their  
6 circumstances, nor do we mean to prejudice in any way the  
7 ability of Ms. Sarkessian or the committee or any other  
8 stakeholder to argue that the bidding protections as applied  
9 to a particular bidder are unreasonable.

10 On that basis, we'd like to have the evidentiary  
11 record that we were proposing.

12 THE COURT: All right. I'll overrule the  
13 objection and take the testimony for what it is,  
14 Ms. Sarkessian. It certainly is not intended to indicate  
15 that these bid protections will, in fact, be granted and  
16 everyone's rights are reserved to object in the future, once  
17 we have potential bidders lined up and are asking for bid  
18 protections.

19 MS. SARKESSIAN: Your Honor, will my ability to  
20 cross-examine the witness later, if there are bid protections  
21 being sought, will that be preserved or do I need to cross-  
22 examine him now?

23 THE COURT: Oh, no, absolutely preserved. You  
24 can -- you'll be able to cross him on anything when we get to  
25 that point.

1 MS. SARKESSIAN: Thank you, Your Honor.

2 MR. DIETDERICH: Your Honor, the other concerns --  
3 so, as we move down to the merits of the bidding procedures  
4 order, Your Honor, I believe that all concerns have been  
5 addressed and objections resolved, other than the objections  
6 of the U.S. Trustee and Mr. Mallon (phonetic), the Mallon  
7 objection that's on the docket.

8 Before I address the specifics of those, I'd like  
9 to make a few general points for the Court and for the  
10 record. The first is, by far, the most important. We have  
11 not made a decision to sell anything and we're not asking you  
12 permission to sell anything today. This effort is part of a  
13 process to look at all of our options across the very  
14 complicated set of assets. These particular businesses have  
15 been identified earlier, because they are less integrated,  
16 and sometimes not integrated at all, into the operations of  
17 FTX.

18 Ledger X is a separately regulated exchange, a  
19 derivative exchange with a different business model,  
20 regulated by the CFDC. It has regulatory capital  
21 requirements, a relationship with its regulators, et cetera.  
22 Embed (phonetic) is not regulated to the same -- in the same  
23 way, but is separate.

24 Japan is in Japan, subject to pretty intense  
25 regulation by the Japanese authorities. The Japanese rules

1 for cryptocurrency are totally different than our rules.  
2 Japan requires, for a cryptocurrency business, the  
3 segregation in cold wallets, of all of the cryptocurrency  
4 responding to customer entitlements and it has very strict  
5 rules about entrust relationships that are established under  
6 law and segregation rules that are established under law for  
7 cryptocurrency and cash. A completely different profile from  
8 what's happening in any other exchange transactions.

9           And Europe, of course, has a Cyprus exchange that  
10 has been run independently with a different customer base.  
11 All of these businesses were actually recently acquired by  
12 FTX; they weren't originally developed as part of the  
13 development of the international platform. They were all  
14 recent acquisitions that have not been fully folded in to  
15 FTX's operations, which is one of the primary reasons that we  
16 believe there may be independent value.

17           But again, this is price discovery. This is the  
18 ability to create an option to sell if the debtors and the  
19 consulting professionals believe it's appropriate under the  
20 circumstances. And I just want to assure everyone that there  
21 has been no decision. Our Board hasn't decided to sell  
22 anything and we would need to present the business case to  
23 our Board, based on the facts and circumstances.

24           The second is related, that we don't know if we're  
25 going to sell the businesses, how we're going to sell the

1 businesses. So, there's a comment from the U.S. Trustee that  
2 we should have a form of asset purchase agreement. We don't  
3 have a form of asset purchase agreement, because we don't  
4 know if it's an asset purchase. It might be a stock sale.  
5 It might be a merger. We might sell one of the businesses in  
6 combination with one of the other businesses.

7           What will determine this will be indications of  
8 interest that we have not received and our sense, again,  
9 working with the consulting professionals on how to make the  
10 most money to return to creditors and customers.

11           There is a question whether some of these  
12 businesses have synergies with businesses that we are looking  
13 at retaining or possibly reorganize or selling separately,  
14 for example, the international platform, or even the U.S.  
15 exchange. The question on synergies, of course, is not that  
16 you wouldn't sell something because they're synergies, but on  
17 whether or not the buyer is paying you enough to compensate  
18 for the loss of those synergies if you kept the asset. These  
19 are synergistic to other buyers, just as they might be  
20 synergistic to us, and so we're going to look at the price  
21 determine -- that determines out of the marketing process in  
22 order to make decisions. We do have substantial interest so  
23 far in all of these assets.

24           The other thing I'd note is just that -- and I  
25 mentioned this in my preliminary remarks about this motion,

1 that we do have a shortened procedure for relief, a shortened  
2 objection period for stalking horse protections, and so Your  
3 Honor should just be aware of that.

4 I'd like to turn to the objection for the U.S.  
5 Trustee. As I mentioned, the first objection was that we  
6 should have a form of asset purchase agreement. Again, we  
7 don't know that we're going to be using that particular form  
8 of a transaction. We might. We're highly likely to for some  
9 of these assets, and when we have a form of asset purchase  
10 agreement, we've committed to put that in front of people,  
11 well in advance of any auction.

12 Obviously, if we have a stalking horse, the  
13 stalking horse will have an important role to play in what's  
14 in the asset purchase agreement. And there's many bidders in  
15 many auctions where we run the auction off the back of a  
16 specific asset purchase agreement or structure that our  
17 stalking horse believes is important to the stalking horse.

18 A related objection is a request that we commit to  
19 the U.S. Trustee now to preserve "all books and records." We  
20 absolutely intend to retain copies of books and records for  
21 the businesses we're selling for a long list of reasons. And  
22 any standard form asset purchase agreement, there's a set of  
23 covenants about records retention. We're not able to retain  
24 records in most circumstances for any purpose whatsoever;  
25 generally, there's a purpose limit on our ability to retain

1 records when we sell a company. One of those purposes is  
2 always our ability to investigate or our ability to relate to  
3 regulators, our ability to do our taxes. And so, the debtors  
4 are not going to lose access to anything that has to do with  
5 causes of action or investigations in connection with an  
6 asset purchase agreement, but again, with respect, I think  
7 the objection is premature, until we have an asset purchase  
8 agreement to show to stakeholders so they can review this  
9 provision and determine whether or not it's adequate.

10 We're not going to commit today. We're not  
11 willing to commit today to simply preserve all books and  
12 records with such simple language.

13 The other objection from the U.S. Trustee is that  
14 we are not agreeing now that we will never release claims  
15 against the employees. So, we have committed, because it's  
16 obvious and easy to do, that we are not releasing claims  
17 against Sam Bankman-Fried, Gary Wang, Caroline Ellison,  
18 Nishad Singh, or I believe we have some language, any of  
19 their family or related persons. But releases of employees  
20 are sometimes an important part of the disposition of a  
21 business when you're the buyer because the value of some of  
22 these businesses is in the people, and as the buyer, you want  
23 the people protected. The last thing you want to do if you  
24 buy a business is to have rank-and-file employees sued by the  
25 person you just bought the business from.

1           Now, this raises a related point and it's  
2 important to say, I think, for the record, as a more broad --  
3 as a more -- something more for Your Honor to understand,  
4 based on the review of Mr. Ray and his team so far, we have  
5 no indication that rank-and-file employees of the debtors,  
6 generally, were complicit in fraudulent activity. Neither  
7 the indictment of Mr. Bankman-Fried, nor the pleas of  
8 Ms. Ellison or Mr. Wang, include criminal charges against the  
9 debtors as enterprises. Indeed, from my initial remarks,  
10 Your Honor, I explained that at least the core part of the  
11 fraud could be implemented with a single number in the Code  
12 for the platform put in by programmers.

13           The nature of this is still under investigation to  
14 be decided, but, you know, for the sake of all of the  
15 employees of FTX, we have no indication that this was the  
16 kind of problem that results in a which will charge against  
17 an enterprise, as opposed to against individuals at the top.

18           MS. SARKESSIAN: Your Honor, I have to object. I  
19 feel like there's testimony, factual testimony being given  
20 here.

21           THE COURT: I agree and I take no note of it.  
22 It's not in evidence.

23           MS. SARKESSIAN: Thank you.

24           MR. DIETDERICH: And that is exactly my point, and  
25 my point is that this is a sale objection and that when we

1 have a sale transaction, and if that sale transaction  
2 involves the release of employees, we will have to make an  
3 evidentiary showing that we have a business judgment for that  
4 release. But right now, it's a sale objection; it's not  
5 before the Court. And we would submit, respectfully, it's  
6 not appropriate to restrict our ability to solicit interest  
7 in these companies on a basis that we have to commit now for  
8 what's going to be in our sale order or in our asset purchase  
9 agreement.

10 THE COURT: Okay. Thank you.

11 MR. DIETDERICH: One other thing, Your Honor,  
12 before I leave -- sorry -- Mr. Mallon, his objection --

13 THE COURT: Yes?

14 MR. DIETDERICH: -- alleges a security interest  
15 arising, as best I can understand it, under Swiss law. That  
16 objection, obviously, can be resolved by its sale objection,  
17 but in addition, we're able to attach a lien to the extent he  
18 had a security interest on the proceeds of the sale, that  
19 will, of course, resolve in connection with a sale. So, we  
20 think that objection should be overruled and the matter  
21 reserved for the sale hearing. Thank you.

22 THE COURT: Thank you.

23 MR. HANSEN: Your Honor, Kris Hansen with Paul  
24 Hastings, on behalf of the Committee.

25 Just before Ms. Sarkessian goes, I wanted to note



1 our reservation of rights. I'll be brief. I know we're  
2 running long today.

3           Your Honor, the Committee is taking a very  
4 cautious approach to this bidding procedures motion. It's  
5 early days in the case and as I mentioned before, we have a  
6 lot of concerns about value preservation and value  
7 maximization. And so, we support the debtors' view that this  
8 is a "wait and see" process. We have a number of issues that  
9 we've identified in our reservation of rights from timing to  
10 access to information, to be able to make decisions for the  
11 debtors and the Committee and for the Court, but also for  
12 bidders to be able to make those decisions. And I won't go  
13 through them all individually here, I would just, again,  
14 refer the Court to our reservation of rights, but I did want  
15 to make sure that the Court understood from the Committee's  
16 perspective, we may be back, to the extent the debtor seeks  
17 to sell an asset and Committee disagrees with that, we may  
18 raise an objection at that point in time.

19           And it's about value maximization and it's about  
20 alternatives. One of the things that Mr. Dietderich alluded  
21 to is the connectivity of these businesses or maybe the lack  
22 thereof, to the broader platform. And as I mentioned earlier  
23 to the Court, the Committee is hard at work with the debtors  
24 to try to understand what the parameters are for potentially  
25 restarting the exchanges and reorganizing this enterprise.

1 And when we move quickly to sell off pieces of the business,  
2 we need to understand their connectedness.

3 And so, yes, Ledger X, from a factual perspective,  
4 Embed, and others were purchased more recently, but we don't  
5 know if they're entirely severable, (indiscernible) if that  
6 severance of them from the broader platform will have a  
7 deleterious effect on the value of the enterprise as a whole.  
8 So, that's something that we're keeping an eye on. We  
9 recognize this process is moving quite quickly, so we're  
10 doing our work quickly, as well, but we just wanted to note  
11 our reservation for the Court.

12 THE COURT: Okay. Thank you.

13 MR. HANSEN: Thank you, Your Honor.

14 MR. HARVEY: Good afternoon, Your Honor. May I  
15 please the Court? Matthew Harvey from Morris, Nichols, Arsht  
16 & Tunnell, on behalf of the Ad Hoc Committee of non-U.S.  
17 customers of FTX.com.

18 I rise, Your Honor, only to say a couple of  
19 sentences of our resolution with the debtors. Your Honor, we  
20 filed a limited objection to the sale. We discussed our  
21 limited objection with the debtors in connection with, excuse  
22 me, a larger role of the Ad Hoc Committee -- with the larger  
23 role of the Ad Hoc Committee as serving and ensuring that  
24 FTX.com customers have access to information and an  
25 opportunity to be heard, whether there may be conflicts --

1 and maybe "conflicts" isn't even the right word -- with the  
2 debtors or the official Committee.

3 We were pleased with the debtors' acknowledgment  
4 and discussion with us of the group's role in the cases and  
5 representations regarding further cooperation going forward  
6 and, accordingly, we're withdrawing our objection. Thank  
7 you.

8 THE COURT: Okay. Thank you.

9 Anyone else? Ms. Sarkessian?

10 Your Honor, our objection set forth, I would say,  
11 four categories of objections. We have resolved two of them.  
12 So the first objection was going ahead with the sale without  
13 having adequate information and that included both -- I guess  
14 I may have used the form asset purchase agreement -- any type  
15 of sale agreement, whether it be stock sale, asset sale,  
16 there is no form of sale agreement and, of course, there is  
17 no schedules and statements or Rule 2015.3 reports.

18 We have resolved that. The debtors are going to  
19 be filing forms of whether it be asset purchase agreements,  
20 stock purchase agreement, whatever it is, at least two weeks  
21 before the sale date of any sale. They are also going to  
22 give the U.S. Trustee and the committee, even before that,  
23 before its uploaded to the data room, they are going to give  
24 the forms to us.

25 With respect to the schedules and statements an

1 order has been -- a proposed order has been submitted, maybe  
2 Your Honor has already signed it, where the schedules and  
3 statements will be filed for the asset sales, at least, two  
4 weeks prior to the sale which will give my office enough time  
5 to take a 341. Then the same will be done for the Rule  
6 2015.3 reports for those debtors who are selling stock in  
7 non-debtor subsidiaries. They would be filing that report,  
8 at least, two weeks. So I will still have to do two 341  
9 Meetings on those, but at least I won't have to do three. So  
10 that is definitely an improvement. So that has been  
11 resolved.

12           The other thing was, essentially, a reservation of  
13 rights regarding the ombudsman because there was nothing in  
14 the record about the debtor -- the privacy policies for these  
15 particular businesses and now they have put in that evidence.  
16 They have attached all the privacy policies. I think there  
17 is an even an official translation of the Japanese one. And  
18 based on our review of that we believe that the debtor has  
19 established that a consumer privacy ombudsman would not be  
20 required with respect to these particular sales. So we are  
21 not pursuing that objection.

22           So what remains, and -- so there's two issues that  
23 remain. I think on the records retention, you know, we just  
24 want to make sure nothing is lost that the debtors are  
25 retaining all records that could potentially be relevant in

1 any civil criminal proceeding. You know, we will look to see  
2 what the wording is when we see if there is a sale agreement,  
3 but, you know, we are glad that they are willing to do that  
4 and we think that that is very important.

5 We just want to make sure that everything is  
6 preserved and there is not some type of discretion, I guess I  
7 would say, from the debtor's viewpoint of -- and we  
8 understand that the original records will be transferred, we  
9 are just talking about copies here. But we don't want them  
10 to say, well, we're not going to keep a copy of this because  
11 the debtor makes the determination that it doesn't think it's  
12 going to be relevant down the line in some proceeding.

13 Well a regulator might have a different view of  
14 that. So we think the widest -- I mean, again, we're talking  
15 about saving copies of documents almost all of which, I am  
16 going to guess, are electronic. So I don't think it would be  
17 any burden on the debtor. I don't think that needs to be  
18 addressed now. I agree with that. I just wanted to put it  
19 on the radar.

20 The issue does need to be addressed now is we are  
21 very concerned about the possibility that the debtor is going  
22 to be selling or welcoming offers to purchase causes of  
23 action against current or former -- it's not just rank and  
24 file employees, its directors, its officers, or employees.  
25 That specifically is mentioned in the bid procedures that if

1 someone is interested in purchasing it they have to indicate  
2 that. So I think they're welcoming that type of thing.

3 Yes, after we made our objection or we -- after we  
4 conveyed our objection to the debtors on this regard they put  
5 in a paragraph in the order that said, okay, with respect to  
6 Mr. Bankman-Fried and three other top officers we agree, we  
7 will not sell any causes of action against them or their  
8 family members. And that is a good first step, but I think  
9 that it seems that the debtors have concluded, at this very  
10 early stage of the case, before there has been an  
11 investigation, an examination by an independent entity into  
12 possible causes of action arising out of the debtors -- the  
13 events that cause the debtor to file for bankruptcy.

14 Before that has taken place they have reached the  
15 conclusion that there is only four people at the top that  
16 were responsible for all of this and that out of the hundred  
17 plus companies of the debtors that there was nobody else, be  
18 it other officers or other employees, that either assisted  
19 them in wrongdoing, or aiding and abetting, or were negligent  
20 and missed something they should have seen, turned a blind  
21 eye maybe nobody else was, maybe it was only four people that  
22 committed this, allegedly, massive fraud involving billions  
23 of dollars and nobody else in the organization and none of  
24 their professionals and nobody else knew about it.

25 There needs to be an investigation before those

1 causes of action are sold. You know, okay, there's a  
2 business in Japan. Where is the evidence that nobody in  
3 Japan was involved with any wrongdoing? Where is the  
4 evidence that nobody in Japan knew about any of this? We  
5 don't know. It's too early.

6           So we feel that given the situation that there  
7 should be added to that list, you know, not just four names;  
8 any officers or directors, any employees, any family members  
9 of officers, directors, any companies that are controlled by  
10 officers or directors, again former or current, or controlled  
11 among an officer and their family members. I mean there is a  
12 wide range here.

13           These causes of action should not be sold at this  
14 point in time. Now the debtors say, oh, well, you know, we  
15 can deal with that at the sale. Here is the problem: right  
16 now we have no purchase agreement to look at. We have no  
17 idea what they are proposing in this regard. We are going to  
18 be getting, potentially, if there's stalking horses, seeing a  
19 stalking horse asset purchase agreement or a stock purchase  
20 agreement. We are going to have seven days to review it and  
21 make an objection; it's a very small period of time.

22           There is going to be schedules. There will be  
23 schedules about which causes of action are going to be  
24 purchased. There might be placeholders in those schedules.  
25 I mean we have seen this many a time. Schedules aren't

1 filed, they're not ready yet. Then we go to the auction  
2 maybe somebody else or another stalking horse wins. Now you  
3 have a tiny window of a few days between the auction and the  
4 sale hearing where they're negotiating the purchase  
5 agreement; that gets filed, you know, maybe a day before the  
6 sale hearing.

7           Again, a lot of times, oh, the schedules aren't  
8 attached, they're not finished, or here they are, but they  
9 can be amended. They can be amended up until the time of the  
10 closing or even after the closing. So we're going to be  
11 scrambling trying to figure out its hidden somewhere in there  
12 are they selling causes of action. I mean it's not going to  
13 be like there is a bright shining light on it.

14           That is a real concern. It's going to be a very  
15 small period of time to look at it and we might not see it.  
16 It might not even be included or, again, they could amend  
17 later after the sale hearing. That is typically said, oh, we  
18 have the right to amend the schedules.

19           So in this case, given what the situation is, this  
20 early on, before an independent investigation we think it is  
21 just completely inappropriate to be selling -- to be even  
22 considering selling these types of claims. If the debtors are  
23 willing to have a prohibition against claims against the top  
24 four they should be willing to expand that to all directors,  
25 officers, employees, again, companies that are controlled by



1 them, and professionals, prepetition professionals; no claims  
2 against them should be sold.

3           So that is what we think is appropriate at this  
4 point in time. And if the debtors cannot do that, if they  
5 say we're not able to do that then maybe the sale should be  
6 put off. Maybe it's too early to do the sales if that is the  
7 situation because we don't have the information, we don't  
8 have the investigation, and you are going ahead with a sale.  
9 So either that has to be carved out of the sale or you have  
10 to wait to do the sale until that investigation is complete.  
11 That is what the U.S. Trustee thinks one choice or the other.  
12 You cannot move forward at this stage of the case without an  
13 independent investigation selling causes of action against  
14 directors, officers, employees or professionals.

15           THE COURT: Well isn't there a way -- I mean, I  
16 certainly would consider any requests from the U.S. Trustee  
17 if the debtors were trying to jam the Trustee at the time of  
18 a sale hearing that you didn't have time to conduct whatever  
19 review you needed to do, to raise whatever objections you  
20 needed to raise at the time of the sale hearing.

21           We don't even know yet whether the debtors are  
22 even going to sell these assets. And we don't know whether  
23 it's going to be an APA, a merger, a stock purchase; we don't  
24 know at this point. I think they're -- I think the debtors  
25 are trying to dip their toe into the water to see what

1 happens, see what kind of interest they receive. I think  
2 it's important to be allowed to do that.

3 We always have -- we have a lot of cases where  
4 there's an expedited sale process for one reason or another.  
5 I understand your concerns about whether there is other  
6 people who might have been at fault other than these four  
7 executives that have been specifically named. And I would  
8 also, perhaps, say to the debtors that if they do receive a  
9 stalking horse bid that includes the purchase of causes of  
10 action that they immediately notify the U.S. Trustee so that  
11 its not hidden in a gigantic sale agreement, that you have  
12 some advanced notice that the issue is live. It might not be.  
13 They might not want to buy the causes of action. They might  
14 just want to buy the platform or the assets and leave the  
15 employees behind, I don't know at this point.

16 MS. SARKESSIAN: Your Honor, could we -- I mean  
17 following up on that idea, I think it should be -- we would  
18 appreciate it if it was more than just letting us know. Of  
19 course, we would like to know. We think this is important  
20 enough that there be a filing that highlights so that  
21 everybody can see if the debtors were selling causes of --

22 THE COURT: I agree, that should be done. It can  
23 be done like we do with a motion to approve a DIP. You know,  
24 we have certain requirements that certain things have to be  
25 highlighted in that motion so that everyone knows that it's

1 in there so we can fashion a form of order that includes that  
2 when they file -- when they receive a stalking horse bid and  
3 they file it they include in that filing something that  
4 highlights for everybody that they're proposing to sell the  
5 causes of action.

6 That helps alleviate some of the time issues for  
7 you and for others who might want to object. And I am  
8 certain that Mr. Hansen and his colleagues, on behalf of the  
9 committee, are going to be investigating whether there are  
10 causes of action against any of these other employees. And  
11 hopefully we will have some understanding of that as well  
12 before we get to the point where the sales are being sought  
13 to be approved.

14 MS. SARKESSIAN: Your Honor, thank you. I  
15 appreciate that. I think, again, it could also come up,  
16 again, assuming if the stalking horse bidder is either not  
17 the winning bidder or is the winning bidder, but the  
18 agreement gets amended, which is possible, right, I mean  
19 after the auction, okay, we agree to pay more, but then we  
20 want these causes of action. Again, at whatever stage if  
21 causes of action are being sold that they be highlighted. So  
22 whether it's a stalking horse stage, whether it's the winning  
23 bidder at the auction, and now they're filing their purchase  
24 agreement to highlight that.

25 THE COURT: I agree.

1 MS. SARKESSIAN: Specifically, not just we're  
2 selling causes of action, what causes of action.

3 THE COURT: I agree.

4 MS. SARKESSIAN: Thank you, Your Honor.

5 THE COURT: That makes sense.

6 MR. DIETDERICH: Thank you, Your Honor. Andy  
7 Dietderich.

8 We can confirm that is a great approach to the  
9 solution. In fact, that is exactly why we actually had it  
10 called out in the solicitation of indications of interest  
11 because we knew we had a special process to run for any  
12 bidder that wanted to do the release.

13 THE COURT: Okay.

14 MR. DIETDERICH: So thank you, Your Honor. With  
15 that I don't think there is any other comments on the sale  
16 order. So I would respectfully ask the Court to enter the  
17 order.

18 THE COURT: Well we need to revise the order.

19 MR. DIETDERICH: Revise the order, of course.

20 THE COURT: Then submit it under COC and we will  
21 get it entered.

22 MR. DIETDERICH: All right. Thank you.

23 With that I think the only business -- the only  
24 remaining business is the scheduling matter.

25 THE COURT: Okay.

1 Mr. Bromley, go ahead.

2 MR. BROMLEY: Good afternoon. May I please the  
3 Court, Jim Bromley of Sullivan & Cromwell on behalf of the  
4 debtors, Your Honor.

5 This is the time that we need to deal with the  
6 scheduling of the motion for the appointment of an examiner.  
7 The motion has been filed by the U.S. Trustees Office. We  
8 have consulted with the Office of the U.S. Trustee and the  
9 creditor's committees counsel. And the view of the debtors  
10 and the creditor's committee's counsel is that the hearing  
11 that has been reserved on the 8th of February, which is an  
12 omnibus hearing date, is the appropriate date to go forward  
13 with the motion for the examiner.

14 We, the debtors, are cognizant that the motion has  
15 been filed for some time, but the date has been held in  
16 abeyance. We do have certain limited discovery requests to  
17 make of the U.S. Trustees Office. We will have submissions  
18 ourselves that we will be making, both evidentiary and legal.  
19 Our suggestion is that the papers and our declarations in  
20 support of our papers be filed on Monday, January 30th. That  
21 would give the U.S. Trustees Office time to respond and to  
22 seek to depose any witnesses that we have.

23 We would suggest, as well, that the U.S. Trustees  
24 Office, and the committee, and we consult for a pretrial  
25 order that would be submitted to the Court no later than

1 Friday the 3rd of February.

2 THE COURT: Ms. Sarkessian, any -- well, let me  
3 ask Mr. Hansen first. Now that we have a committee we need  
4 to know your view as well.

5 MR. HANSEN: Exactly, Your Honor. So we agree  
6 with Mr. Bromley. Again, its Kris Hansen with Paul Hastings  
7 on behalf of the committee. We agree with Mr. Bromley in  
8 terms of the dates.

9 I just wanted to point out for the Court that we  
10 also may have evidence to present. We will make that  
11 decision in enough time to let Ms. Sarkessian know so that  
12 she can similarly take discovery of our witness as well if we  
13 have that.

14 THE COURT: Well I currently have an omnibus  
15 hearing on the 8th scheduled at one for this case, and I have  
16 two other matters on that morning. So if we're going to have  
17 an extensive evidentiary presentation I may need to move the  
18 date or if I can't I will move the other matters and move  
19 this one up for the full day. It sounds like we may need a  
20 full day for this hearing.

21 MR. HANSEN: I think between argument and  
22 potential evidence I don't know that it would take a full  
23 day, but I think you should reserve that, Your Honor.

24 THE COURT: Okay.

25 MR. HANSEN: Jim, I'm not sure if you have a

1 different view.

2 MR. BROMLEY: I agree with that, Your Honor.

3 THE COURT: All right. Let me hear from Ms.  
4 Sarkessian.

5 MS. SARKESSIAN: Thank you, Your Honor. For the  
6 record Juliet Sarkessian on behalf of the U.S. Trustee.

7 Your Honor, we understand from the last hearing  
8 that Your Honor had the February 20th date that is scheduled  
9 in this case that Your Honor has the entire day for this case  
10 if I am correct about that.

11 THE COURT: February 20th?

12 MS. SARKESSIAN: I'm sorry, January 20th. I don't  
13 know why I keep saying February. January 20th.

14 THE COURT: That's a holiday, Court holiday.

15 MS. SARKESSIAN: January 20th. Friday, January  
16 20th which I believe had been scheduled primarily for a  
17 hearing -- well, there's a few things:

18 There's a hearing in connection with the Robinhood  
19 stock which has been seized. And I believe last time around  
20 debtor's counsel indicated that might be moot because of the  
21 seizure. There were also fi

22 The U.S. Trustee believes that that would be the  
23 best date for the hearing on the examiner, in part, because  
24 we do have issues with certain of the retention applications  
25 that are scheduled for hearing on January the 20th that the

1 scope of the retentions encompasses work that might be done  
2 by an examiner. So we think that argument, sort of,  
3 dovetails with the examiner motion and it makes sense to have  
4 them both heard at the same time.

5 Our examiner motion has been on file since  
6 December the 2nd. So, obviously, has had more than enough  
7 time to address that. We recognize that committee counsel  
8 has not been -- was retained on, I believe, December the  
9 20th, but nevertheless, you know, there has been a good  
10 amount of time to respond. So we would ask for that.

11 Absent in the alternative we would ask if Your  
12 Honor has a date. We too were concerned about February the  
13 8th not being adequate time with it being scheduled at 1 p.m.  
14 So we were wondering if Your Honor has a date between the  
15 20th, January 20th and the February the 8th that would have  
16 more time available then the 8th.

17 The other thing I would say is that, you know, the  
18 U.S. Trustee would need to get the reply on file three days -  
19 - three business days prior to the hearing. So we would --  
20 given how long parties have had our motion we would like to  
21 have, at least, a week between when the objections are filed  
22 and when our reply is due.

23 If, for example, Your Honor was to say put the  
24 hearing on the 8th since our reply would be due February the  
25 3rd we would want objections filed to January the 27th to



1 give us one week.

2 THE COURT: Okay. All right. I do think I need  
3 to -- the 20th doesn't work, I don't think, for this. It's  
4 too soon. There is outstanding discovery. If it hasn't  
5 already been issued it will be issued, I assume.

6 Are you taking any discovery?

7 MS. SARKESSIAN: I have received no discovery. I  
8 am trying to imagine what possible discovery there could be  
9 against the U.S. Trustee, but I have not received any.

10 We have not seen an objection, so we don't know  
11 who their witnesses are. We have no idea if they're, in fact  
12 -- Your Honor, the U.S. Trustees position is that this is  
13 mandatory under the code and, therefore, there is not a need  
14 to have any evidence. It's legally mandatory. Nevertheless,  
15 we understand that the parties may want to put on evidence,  
16 but we don't know who they plan to put on, what they plan to  
17 put on; we have no idea.

18 THE COURT: I think you're familiar with my  
19 position on the mandatory nature of the appointment of an  
20 examiner.

21 MS. SARKESSIAN: Yes, Your Honor.

22 THE COURT: For the record, I do not believe it's  
23 mandatory.

24 MS. SARKESSIAN: Yes.

25 THE COURT: Let's do this: I think the 8th -- I

1 want to make sure we have a full day. I am going to  
2 reschedule this for February 6th which is Monday of that  
3 week. We will start at 9:30 a.m. The debtors and the  
4 committee's responses will be due by the 25th. Then the  
5 Trustee will have until the 1st.

6 So you have a week, Ms. Sarkessian, for your  
7 reply.

8 MS. SARKESSIAN: Yes, Your Honor. Thank you.

9 THE COURT: Then we will have the hearing on the  
10 6th. If there is a -- pretrial orders are always helpful for  
11 me. So if there is -- if we're going to have an evidentiary  
12 hearing on the 6th let's have a pretrial order by close of  
13 business on the 3rd. So 5 p.m. on the 3rd.

14 Mr. Bromley and Mr. Hansen, one, if you are going  
15 to take discovery of the U.S. Trustee, please, do that  
16 immediately so that Ms. Sarkessian knows that she needs to do  
17 some discovery work.

18 Ms. Sarkessian, in light of my view on the  
19 mandatory nature of the appointment of an examiner I don't  
20 know if that now opens up for you your desire to take  
21 discovery of the debtors, but if you do you should do that,  
22 obviously, as soon as possible.

23 MS. SARKESSIAN: Understood, Your Honor.

24 THE COURT: Did I miss anything? Did I cover all  
25 of the issues? Do I have all of the dates that we need for

1 everybody?

2 MR. BROMLEY: I think that is all of the dates  
3 that we need, Your Honor. Thank you very much.

4 THE COURT: Okay. Ms. Sarkessian, anything else?

5 MS. SARKESSIAN: I don't -- I think those are all  
6 the dates in connection with the examiner motion.

7 THE COURT: Okay. Thank you.

8 All right. Are we done? Oral argument 12  
9 minutes.

10 MR. GLUECKSTEIN: 30 seconds.

11 (Laughter)

12 MR. GLUECKSTEIN: We really appreciate the Court  
13 indulging us for such a long hearing today.

14 The only other scheduling matter I wanted to  
15 raise, Your Honor -- Brian Glueckstein for the debtor. There  
16 was reference to the January 20th hearing. We did elude to  
17 this in the status conference a week ago, we have been in  
18 touch with counsel for BlockFi and we are asking to adjourn  
19 the hearing on the 20th with respect to our motion to enforce  
20 the automatic stay with respect to the Robinhood issues.  
21 BlockFi has a related motion, an evidentiary motion, that is  
22 part and parcel of that hearing.

23 We are asking at this time that that hearing be  
24 adjourned to a date to be determined. We will come back to  
25 the Court in light of the Government seizure of the shares.

1 There was a proceeding in the BlockFi bankruptcy case earlier  
2 this week and that parties are continuing to talk about next  
3 steps there with respect to all of the issues involving the  
4 Robinhood shares. We would benefit from some time.

5 So we would ask, with Your Honor's permission,  
6 that we adjourn that hearing on those two issues. There are  
7 other things, of course, scheduled that day, the retention  
8 motions and status conference that Your Honor ordered this  
9 morning on the redaction issues. But with respect to the  
10 debtor's motion and related evidentiary issue we ask that  
11 that be adjourned.

12 THE COURT: What is BlockFi's position on the  
13 continuance of their motion?

14 MR. GLUECKSTEIN: They represented to me -- they -  
15 - we had an email exchange this morning where they said they  
16 were okay with us so representing.

17 THE COURT: Okay. We will take that off then for  
18 the 20th; both of those off for the 20th.

19 Anything else before we adjourn?

20 (No verbal response)

21 THE COURT: All right. Thank you all very much.  
22 We are adjourned. I will see everybody on the 20th.

23 (Proceedings concluded at 1:48 p.m.)  
24  
25

CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ William J. Garling January 12, 2023

William J. Garling, CET-543  
Certified Court Transcriptionist  
For Reliable

/s/ Tracey J. Williams January 12, 2023

Tracey J. Williams, CET-914  
Certified Court Transcriptionist  
For Reliable

/s/ Mary Zajackowski January 12, 2023

Mary Zajackowski, CET-531  
Certified Court Transcriptionist  
For Reliable

/s/ Coleen Rand January 12, 2023

Coleen Rand, CET-341  
Certified Court Transcriptionist  
For Reliable

**EXHIBIT 4**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE: Chapter 11  
EV ENERGY PARTNERS, et al., Case No. 18-10814 (CSS)  
Courtroom No. 6  
824 North Market Street  
Wilmington, Delaware 19801  
Debtors. May 16, 2018  
10:00 A.M.

TRANSCRIPT OF HEARING  
BEFORE THE HONORABLE CHRISTOPHER S. SONTCHI  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors: Brad Weiland, Esquire  
Jeffrey Zeiger, Esquire  
William Arnault, Esquire  
Casey McGushin, Esquire  
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Proceedings recorded by electronic sound recording,  
transcript produced by transcription service.

1 priority rule, because the unsecured creditors are not  
2 receiving more than they're entitled to. And I think it was  
3 definitely filed in good faith and none of the arguments,  
4 numerous arguments made in support, to say it wasn't filed in  
5 good faith, don't hold any water.

6           On 1126, I think the debtors are correct that they  
7 did not have to solicit equity in this case because equity is  
8 not receiving a distribution under the plan on account of its  
9 interests, because they're not entitled to anything. And the  
10 cases that deal with class-skipping, et cetera, aren't  
11 applicable, and there have been numerous cases in this  
12 district and, otherwise, that have allowed just this  
13 behavior.

14           What would have been accomplished by having the  
15 equity be a vote here? They probably would have voted "no."  
16 Almost certainly would have voted "no," and we would have  
17 been in a cram down, and we would have had a valuation  
18 hearing, and they would have found to be out of the money,  
19 and the absolute priority rule, with regard to equity, would  
20 have been satisfied, so it would have been fair and  
21 equitable, so it's just a waste of time.

22           With regard to the disclosure statement, I think,  
23 frankly, there's an argument to be made that equity that's  
24 not in the money doesn't have standing to object to a  
25 disclosure statement, because the whole point of the



1 disclosure statement isn't to generally inform the world of  
2 the facts of the case; it's to provide the investors with the  
3 information they need to know how to vote. If you don't  
4 vote, a disclosure statement is really irrelevant.

5 But even throwing that aside, I still think the  
6 disclosure statement contains more than enough information.  
7 It's already a telephone book, for those of us who remember  
8 what telephone books are, and, you know, there has to be a  
9 limit on what you have to put in a disclosure statement. I'd  
10 like to see shorter confirmation orders, shorter DIP orders,  
11 and shorter disclosure statements, all of which would be to  
12 the benefit of society as a whole. So, I'm not -- I think  
13 the disclosure statement here is more than adequate.

14 And, you know, there's really no reason to go back  
15 into transactions that occurred in 2014 and 2015 that just  
16 aren't relevant to the plan that's before the voters. This  
17 is a little -- kind of all over the place, but there's a lot  
18 of cover. There's a lot I didn't mention, but in all those  
19 instances and in all those arguments, I reject the equity  
20 holders' position and affirm the debtors'.

21 Real quick, on appointment of the examiner -- and  
22 this goes to the "there's no there there" -- you don't -- I  
23 don't believe, and I've said this in numerous cases and my  
24 colleagues have said it, that it's just mandatory to appoint  
25 an examiner, as long as someone asks for one. I think there

1 has to be an actual examination that needs to be done, an  
2 appropriate inquiry that needs to be pursued and I think the  
3 Movant in a motion to appoint an examiner has the burden of  
4 proof of establishing something, some reason that it would be  
5 helpful to appoint an examiner and I just -- I don't see  
6 anything here whatsoever to appoint an examiner.

7           Now, all this, of course, you know, it would  
8 certainly be better if there was more value here for the  
9 unsecured creditors, as well as equity. We can't -- the  
10 Court is powerless to create value out of thin air, and all I  
11 can do in connection with determining value is weigh the  
12 evidence as it's presented to me and do the best I can. And  
13 I may be wrong, and it may be a situation here where equity  
14 is entitled to more, but based on the evidence I have, I am  
15 sorry to say that I don't believe they are, and that they are  
16 fortunate to be getting the 5 percent that they're getting.

17           And it's interesting even though -- talking about  
18 fiduciary duties -- I mean, even though all the evidence  
19 indicated to the Board that this -- that equity was out of  
20 the money, this Board fought very, very hard to get some  
21 return to its equity holders, perhaps even breaching their  
22 fiduciary duties to their creditors in the process. But I  
23 think that that speaks volumes to the integrity of the Board  
24 in this situation and is another reason that it's clear to me  
25 that they have acted with robust corporate governance and

**EXHIBIT 5**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE: Chapter 11  
PADDOCK ENTERPRISES, LLC, Case No. 20-10028 (LSS)  
Courtroom No. 2  
824 North Market Street  
Wilmington, Delaware 19801  
Debtor. June 17, 2020  
. . . . . 3:30 P.M.

TRANSCRIPT OF TELEPHONIC RULING  
BEFORE THE HONORABLE LAURIE SELBER SILVERSTEIN  
UNITED STATES BANKRUPTCY JUDGE

TELEPHONIC APPEARANCES:

For the Debtor: Michael Merchant, Esquire  
John Knight, Esquire  
Brendan Schlauch, Esquire  
Sarah Silveira, Esquire  
RICHARDS LAYTON FINGER, P.A.  
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Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

1 TELEPHONIC APPEARANCES (Continued):

2 For the Debtors: Jeffrey Bjork, Esquire  
3 Amy Quartarolo, Esquire  
4 Christina Craige, Esquire  
5 Helena Tseregounis, Esquire  
6 Lisa Lansio, Esquire  
7 LATHAM & WATKINS  
8 355 South Grand Avenue  
9 Los Angeles, California 90071

- and -

Richard Levy, Esquire  
330 North Wabash Avenue, Suite 2800  
Chicago, Illinois 60611

- and -

George Davis, Esquire  
885 Third Avenue  
New York, New York 10022

For the U.S. Trustee: Richard Schepacarter, Esquire  
OFFICE OF THE UNITED STATES TRUSTEE  
844 King Street  
Wilmington, Delaware 19801

1 (Telephonic hearing commenced at 3:46 p.m.)

2 THE COURT: Good afternoon, counsel. This is  
3 Judge Silverstein. We're here in Paddock Enterprises; Case  
4 No. 20-11028.

5 I apologize for my tardiness, but I'm going to get  
6 right into my ruling and I will be reading it.

7 On May 20th of this year I held a combined  
8 evidentiary hearing on three motions; debtor's motion to  
9 appoint James L. Patton, Jr., as the legal representative for  
10 future asbestos claimants, the United States Trustees motion  
11 to appoint a legal representative for future asbestos  
12 claimants, and the United States Trustees motion for an  
13 examiner. Testimony was adduced from four witnesses and  
14 numerous documents were submitted into evidence. On May 21st  
15 I heard argument and took the motions under advisement.

16 Having considered the evidence and argument I am  
17 granting debtor's motion to appoint Mr. Patton as the future  
18 claims representative and consequently denying the U.S.  
19 Trustees motion to appoint a legal representative for future  
20 asbestos claimants. I am also denying the United States  
21 Trustees motion to appoint an examiner.

22 First addressing the two motions to appoint a  
23 legal representative. I recently addressed the standard for  
24 approval of a legal representative under Section 524. In the  
25 Imerys Talc America case I concluded that a legal

1 representative must be independent of the debtors and other  
2 parties in interest in the case, and must be able to act with  
3 undivided loyalty to demand holders. In Imerys, however, I  
4 only had one candidate for the legal representative. Here I  
5 have two.

6           After considering the evidence I have determined  
7 that Mr. Patton is the best choice for this particular case.  
8 I do so for multiple reasons including that Mr. Patton meets  
9 the standard I established in Imerys, he is independent of  
10 the debtors and other parties in interest in the case, and is  
11 able to act with undivided loyalty to demand holders.

12           As in Imerys, I do not view Mr. Patton's selection  
13 by Paddock's predecessor in interest to represent future  
14 claimants prepetition as an impediment to selection. Mr.  
15 Patton's engagement letter with Paddock's predecessor is  
16 clear that in his prepetition capacity Mr. Patton's sole  
17 responsibility and loyalty was to the future claimants, and  
18 the engagement letter is also clear that Mr. Patton could be  
19 adverse to the company that was paying for his services.

20           Mr. Patton has no other connection to Paddock or  
21 Owens-Illinois. Mr. Patton has significant experience as a  
22 future claims representative and representing future claims  
23 representatives. Mr. Patton proposes to retain a team that  
24 is experienced in representing future claim representatives  
25 and performing the types of services necessary in an asbestos

1 mass tort case.

2           Mr. Patton can conduct an investigation into the  
3 corporate monetization transaction. As I already concluded,  
4 his prepetition engagement specifically contemplated that he  
5 could be adverse to Owens-Illinois, and the evidence was  
6 clear that Mr. Patton did not advise Owens-Illinois with  
7 respect to the transaction. Indeed, he had input whatsoever  
8 into the transaction.

9           As Mr. Whitely, Mr. Whitley also meets the  
10 standard I established in Imerys. Mr. Whitley is independent  
11 of the debtors and other parties in interest in the case, and  
12 is able to act with undivided loyalty to demand holders. It  
13 is also evident that he has had a distinguished career in  
14 both government service and private practice. I have no  
15 doubt Mr. Whitley understands the role of a future claims  
16 representative, that he would be an aggressive advocate for  
17 future claimants, and would bring all his professional  
18 experience to bear on the position, but he lacks any  
19 experience as future claims representative.

20           There was no evidence from which I can conclude  
21 that the team Mr. Whitley proposes to put in place around him  
22 has experience in representing future claims representatives  
23 or any significant experience in mass tort bankruptcy cases.  
24 Further, his firm, which would lead the team, represented  
25 Owens-Illinois in asbestos lawsuits from the mid-1990's until



1 the early 2000's.

2           While a previous engagement dating back two  
3 decades may not be a significant retention issue generally,  
4 here the asbestos claims that debtor seeks to resolve by the  
5 bankruptcy filing date back to a product manufactured between  
6 1948 and 1958. It is not certain that the law firms previous  
7 representation of Owens-Illinois would manifest itself as an  
8 issue in the bankruptcy case, but the United States Trustee,  
9 in the examiner motion, takes the position that an issue in  
10 this case is whether there is, as debtors suggest, a  
11 disparity between claims historically managed or settled by  
12 Owens-Illinois and those currently being asserted, and  
13 whether the amount of asbestos liability the debtor should be  
14 required to pay is more accurately reflected by historical or  
15 current litigation trends.

16           Considering all of the above I conclude that Mr.  
17 Patton is the best choice for this case.

18           With respect to the motion to appoint an examiner  
19 in his motion the United States Trustee requests that the  
20 examiner be directed to investigate ten separate questions or  
21 areas of inquiry. These ten questions can be broadly placed  
22 into three areas: the legality and effect of the corporate  
23 monetization, and the role of debtor's officers, directors  
24 and professionals in the corporate monetization; a claims  
25 analysis of the historical claims and current claim; and

1 whether debtor can propose a confirmable plan.

2           The examiner motion is opposed by debtors, the  
3 official committee of asbestos personal injury claimants, the  
4 then proposed and now appointed future claims representative,  
5 as well as O-I Glass. The examiner motion is supported by  
6 the United States on behalf of the Environmental Protection  
7 Agency and Department of Interior, as well as various state  
8 environmental agencies.

9           The United States Trustee first argues that an  
10 appointment of an examiner is mandatory under Section 1104(c)  
11 in that the debtors fixed, liquidated, unsecured debts exceed  
12 \$5 million dollars. The United States Trustee argues that  
13 based on debtor's filed schedules it is likely that these  
14 liabilities will exceed that level.

15           As to this position, as I indicated at argument,  
16 this court has consistently ruled that Section 1104(c) is not  
17 mandatory. I will not deviate from that holding even  
18 assuming that the level of fixed liquidated unsecured debt  
19 exceeds \$5 million dollars.

20           The United States Trustee also argues that the  
21 appointment of an examiner is in the best interest of  
22 creditors. The United States Trustee believes that having an  
23 independent third-party conduct an investigation is the most  
24 efficient way to approach the issues that need to be  
25 explored, in the case and will provide the court and other

1 parties with an independent analysis that all can rely on.

2           The United States and the various state  
3 environmental agencies assert various environmental claims  
4 against debtor and are concerned that the bankruptcy,  
5 preceded by the corporate monetization, not be used to evade  
6 compliance with environmental laws. Their focus is that the  
7 corporate monetization and the sufficiency of the support  
8 agreement be investigated.

9           It has been evidenced since the first day of this  
10 case that the corporate monetization transaction will be the  
11 subject of diligence. The evidence is that both the asbestos  
12 personal injury claimants committee and the FCR have already  
13 begun that diligence. Young Conaway Stargatt & Taylor has  
14 the corporate and bankruptcy expertise to perform an analysis  
15 of the corporate monetization, what issues, if any, arise  
16 from it, and any necessary remedies. The committee has  
17 retained Winston & Strawn as special litigation and corporate  
18 counsel to examine the corporate monetization.

19           As for a claims analysis both the committee and  
20 the FCR will be required, as part of their role and in  
21 conjunction with the plan, to review the asbestos claims  
22 asserted against the estate. The disparity issue raised by  
23 debtors and the United States Trustee can be reviewed with  
24 the committee and the FCR.

25           Further, debtor asserts that it is solvent and

1 that this is a 100 percent case. Debtor asserts that it will  
2 need a consensual plan in order for it to be confirmed under  
3 524(g) and that it will need to comparably treat holders of  
4 environmental claims.

5           Considering the evidence and arguments I do not  
6 believe at this time that there would be anything gained by  
7 appointing an examiner. And, thus, I cannot conclude that it  
8 is in the best interest of creditors to appoint one. I will  
9 give the debtor, the committee and the FCR an opportunity to  
10 negotiate a 100 percent plan for the holders of all claims  
11 against debtor. All creditors will have an opportunity to  
12 weigh-in on the plan, take any appropriate discovery at that  
13 time or seek any relief.

14           So, for those reasons I am denying that motion.  
15 And that concludes my rulings.

16           I need to take a look at the order appointing Mr.  
17 Patton. I know in the Imerys case there were some -- I think  
18 there were some adjustments to the order. So, I am not  
19 certain if that has already been done here or it's even  
20 needed here. I would ask the debtor to let my Chambers know  
21 where on the docket the current form of order, proposed form  
22 of order appointing Mr. Patton is. Then as for the examiner  
23 motion we will just enter a simple order, for the reasons  
24 stated on the record, the motion is denied.

25           Are there any questions?

1 MR. SCHEPACARTER: Your Honor, this is Richard  
2 Schepacarter from the United States Trustee. Can you hear  
3 me?

4 THE COURT: Yes, Mr. Schepacarter.

5 MR. SCHEPACARTER: We don't have Zoom, so now I  
6 feel a little disconnected.

7 With respect to the order that denied the United  
8 States Trustees motion for the appointment of the FCR did you  
9 want us to prepare an order and circulate it or was it your  
10 intention that your Chambers would draft an order and then  
11 just enter it. That was, I think, the last one that wasn't  
12 addressed.

13 THE COURT: Thank you. I did not address that.  
14 We will do a simple one there as well just for the reasons  
15 stated on the record.

16 MR. SCHEPACARTER: Okay. Thank you, Your Honor.

17 THE COURT: Thank you.

18 MR. BJORK: Your Honor, this is Jeff Bjork with  
19 Latham & Watkins for the debtor.

20 We have no questions. We will contact your  
21 Chambers. I believe the Young Conaway order mirrors the  
22 Imerys order. So, we will confirm that.

23 THE COURT: Okay. I appreciate that.

24 Anyone else?

25 (No verbal response)

1 THE COURT: Okay. Thank you, counsel, very much.  
2 Again, I apologize for my tardiness. We're adjourned.

3 COUNSEL: Thank you, Your Honor.

4 (Proceedings concluded at 4:00 p.m.)  
5

6 CERTIFICATE  
7

8 I, MARY ZAJACZKOWSKI, certify that the foregoing is a  
9 correct transcript from the electronic sound recording of the  
10 proceedings in the above-entitled matter.

11 /s/Mary Zajaczkowski June 18, 2020  
12 Mary Zajaczkowski, CET\*\*D-531  
13  
14  
15  
16  
17  
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24  
25

**EXHIBIT 6**

UNITED STATES BANKRUPTCY COURT

DISTRICT OF DELAWARE

Case No. 09-11786-CSS

- - - - -x

In the Matter of:

VISTEON CORPORATION, et al.

Debtors.

- - - - -x

United States Bankruptcy Court

824 North Market Street

5th Floor

Wilmington, Delaware

May 12, 2010

10:05 AM

B E F O R E:

HON. CHRISTOPHER S. SONTCHI

U.S. BANKRUPTCY JUDGE

ECR OPERATOR: LESLIE MURIN

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400



1 this phrase -- some judge did -- but this really is "crying  
2 examiner in a crowded room", and it should be denied. Thanks,  
3 Your Honor.

4 THE COURT: All right, anyone else? Mr. Bienenstock,  
5 reply?

6 MR. BIENENSTOCK: Yes, Your Honor. I'm delighted  
7 with what I heard, because the creditors' committee apparently  
8 feels that they can rewrite the Bankruptcy Code and argue to  
9 Your Honor that because the equity holders have competent  
10 counsel and financial advisors, they said, that's a defense to  
11 an examiner motion. No, that's a defense, perhaps, to a motion  
12 to establish a statutory committee. The Code doesn't have any  
13 balancing test, any defense that if parties are adequately  
14 represented, that that's a defense to the appointment of an  
15 examiner.

16 Similarly, Mr. Willett has asked the Court, what will  
17 the world think. What will others think? It doesn't matter.  
18 The Code doesn't say appoint an examiner when there's five  
19 million dollars of debt unless other people will think bad  
20 thoughts. We have a right. I'm tickled pink that my  
21 adversaries have felt the need to construct out of the clear  
22 blue sky defenses that don't exist. And I think what that  
23 tells the Court is that we're entitled to an examiner to  
24 investigate the things we asked for, and we hope the Court will  
25 grant them.

1 THE COURT: Thank you. Excuse me. All right, the  
2 issue, of course, before the Court, is whether to appoint an  
3 examiner, pursuant to the motion in front of the Court. And  
4 the statute which is applicable, of course, is 1104(c). "If  
5 the Court does not order the appointment of a trustee," which I  
6 have not, "then at any time before the confirmation ... on  
7 request of a party in interest ... and after notice and a  
8 hearing, the court shall order the appointment of an examiner  
9 to conduct such an investigation of the debtor as is  
10 appropriate, including" and then it goes on, "if such  
11 appointment is in the interests of creditors" equity holders,  
12 et cetera, "or the debtor's fixed, liquidated, unsecured debts  
13 ... exceed \$5,000,000." It's a troubling -- well, troubling,  
14 it's a somewhat ambiguous statute notwithstanding the fact that  
15 it says "shall", because it immediately limits the scope of  
16 that "shall". I don't think it's true, and I think it would be  
17 an absurd result to find that in every case where the financial  
18 criteria is met and a party-in-interest asks, the Court must  
19 appoint an examiner. There has to be an appropriate  
20 investigation that needs to be done.

21 Now, it's -- until someone does an investigation, of  
22 course, you don't know whether an investigation really needed  
23 to be done or not. But at some point there has to be a level  
24 of smoke, if you will -- not a lot but more than none, more  
25 than just a whiff of smoke -- but some sort of indication, some

1 sort of allegation or facts that make the Court think in a  
2 whole that, hmm, somebody needs to look into this independently  
3 and tell the Court what's going on. It's easy in Lehman or  
4 Revco to figure out that somebody's got to figure this out.  
5 But not every case that has over five million dollars of  
6 nontrade needs an examiner.

7 This case does not need an examiner. We are in a  
8 good old fashioned brawl, all right? We all know it. And the  
9 prize is an automobile company -- excuse me, a parts -- well,  
10 an automobile manufacturer of parts -- with a nice healthy  
11 client. Kind of a rarity, but it's nice to have. And we're  
12 going to fight. There's going to be a fight. Well, let's get  
13 to it. And I don't think there's any reason to keep tiptoeing  
14 around it. Equity thinks they're in the money. They're going  
15 to come to confirmation and they're going to try to prove it.  
16 Mr. Willett's clients have an issue with what's on the table.  
17 They're going to come in and litigate it. The bondholders like  
18 what's on the table or support it; they're going to come in and  
19 litigate it. There are no hidden motivations, here. There are  
20 hidden agendas, here. I think this is just a good old  
21 fashioned fight over a debtor that has some value, if it's  
22 restructured. It's a good company with a bad balance sheet.  
23 That's what it looks like. Maybe that's wrong. Maybe it's a  
24 good company with a good balance sheet. But that's what  
25 confirmation is going to tell us.

**EXHIBIT 7**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE:	.	Chapter 11
	.	
AMERICAN HOME MORTGAGE	.	Case No. 07-11047 (CSS)
HOLDINGS, INC., a Delaware	.	(Jointly Administered)
corporation, et al.,	.	
	.	Oct. 31, 2007 (10:09 a.m.)
Debtors.	.	(Wilmington)

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE CHRISTOPHER S. SONTCHI  
UNITED STATES BANKRUPTCY COURT JUDGE

Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

1 budget. Her view was that if the Code required the  
2 appointment of an examiner, she would appoint one and have  
3 the examiner ready to go if an issue arose later in the case  
4 that required an examination, but because there was no  
5 examination required at that time, she would merely put the  
6 examiner in place to satisfy some reading of 1004©) (2) and  
7 keep that examiner in place until or unless an issue arose in  
8 the case that required some examination. So, we've seen  
9 through the treatises and case law and largely this is  
10 unreported in how courts have dealt with this, courts  
11 applying a practical approach to 1104©) (2) because again,  
12 Your Honor, burdening this estate with an examiner where  
13 there is no apparent need or no established need for an  
14 examination would simply waste the creditors' money. So with  
15 that, we would ask that the Court deny the request.

16 THE COURT: All right. Thank you, Mr. Brady. You  
17 read from the elements of Colliers that I have actually up  
18 here on the bench and marked, and I think it's important -  
19 Clearly, and I'm dealing here with the narrow issue of  
20 1104©) (2) because I don't think the appointment of an  
21 examiner would be in the best interest of the creditors or  
22 the equity security holders or the interests of the estate.  
23 So, I would deny, as I said earlier, I would deny the motion  
24 for appointment of an examiner under ©) (1), and I'd like to  
25 pick up before I sort of speak more on, I think, Mr. Brady's

1 comment earlier in connection with the trustee motion and I  
2 think it's equally applicable to the examiner motion, I  
3 didn't see any real factual allegations contained in the  
4 motion when it came to these issues. I felt that the movants  
5 basically parroted the language of the statute and sort of  
6 said, Because I just said what the statute says, a trustee or  
7 an examiner should be appointed, and obviously, you need to  
8 do more than that. The problem of course is that shall means  
9 shall, and the courts require, when I see something like that  
10 it obviously means the court's required to appoint an  
11 examiner if the criteria are met. I think it's important to  
12 look at ©) (2) though as - not on its own, but as it relates  
13 to the rest of the sentence. So, the Court shall order the  
14 appointment of an examiner to conduct such an investigation  
15 of the debtor as is appropriate if the financial criteria are  
16 met. The problem isn't so much shall, it's that if and  
17 whether if means, you know, if the financial criteria are met  
18 you have to appoint an examiner. Well, if you read it that  
19 way, the first part of the sentence doesn't make any sense.  
20 So I think you have to read it as a whole, and I think - I  
21 have tons of respect for Judge Fitzgerald, but I think, you  
22 know, appointing an examiner and then giving that examiner no  
23 budget and no duties is tantamount to not appointing an  
24 examiner, and having one ready to go, I mean, the process of  
25 appointing an examiner is not particularly onerous, it

1 doesn't take a ton of time. So - and I'm sensitive to this  
2 issue and I know the Office of the United States Trustee is  
3 sensitive, and I understand their position in connection with  
4 shall meaning shall, and I think that's true, but I think in  
5 order for - I would draw a bit of a distinction between what  
6 Judge Walsh and Judge Balick have appeared to rule which is  
7 simply that it's a best interest test. I don't think that's  
8 correct. The best interest is in ©) (1). It's not in ©) (2).  
9 I think the financial criteria are important, and obviously,  
10 they're met in this case, but that's only one piece of the  
11 puzzle, and the other piece of the puzzle is that there has  
12 to be an investigation to perform that's appropriate. I  
13 think the cases cited in the Colliers treatise discuss that.  
14 I think that's a more nuance approach than sort of saying it  
15 is what it is, and if you cry "examiner" in a crowded case,  
16 you get one. In this case, reading the motion carefully, I  
17 really didn't see a request for any investigation. There was  
18 a complaint about practices. A 2004 request for information  
19 about individual loan files that we've already discussed, but  
20 no real articulation of what it was that the movants wanted  
21 to be investigated by an examiner, and even if one were to  
22 sort of assume, okay, they want someone to examine the  
23 debtors' practices in connection with loan origination and  
24 servicing that may be violations of state or federal law, I  
25 don't think that at this time giving someone sort of carte



1 blanche to look into that issue will be appropriate. Again,  
2 the Committee is extremely involved in this case. There are  
3 ongoing investigations, possibly by other governmental  
4 entities. There's obviously a lot of issues going on in  
5 Congress right now in connection with these types of  
6 practices that allegedly the debtor participated in, so I'm  
7 not - I don't think in this case there would be anything to  
8 be gained by appointing an examiner and giving that examiner  
9 a budget and saying, I'd like you to investigate the debtors'  
10 loan origination and servicing policies in connection with  
11 whether it may have violated state or federal law. I think  
12 that's asking for a \$20 million report, and I'm not sure what  
13 it would accomplish. So, with regard to the temporal  
14 requirement, again, I'm not - I understand there are those  
15 cases. I think it would be more appropriate to deny the  
16 motion without prejudice than to sort of say, Okay, I'm  
17 granting the motion, but I'm not at this point going to  
18 appoint an examiner. Again, I think that's just tantamount  
19 to denying the motion. So, I'm going to do that. I'm going  
20 to deny the motion without prejudice to be brought again if  
21 new facts arise or if the status of the case changes. And  
22 just an aside, I mean, I don't know what this case ultimately  
23 ends up with, whether we end up in with a liquidating plan,  
24 whether we convert to 7. I mean, I know - I'm sure there are  
25 discussions that I'm very happy to not be participating in

1 that may be focused on that, but my instincts tell me that to  
2 the extent there's some real issues out here, that they are  
3 going to be investigated by somebody in the future, and if  
4 turns out that that's not the case, I'm certainly open to  
5 hearing someone ask me to appoint someone to do that on  
6 behalf of the debtors' estate at the appropriate time. All  
7 right? Are there any other issues? I'm going to - So, I  
8 think we've addressed the issues raised by - Oh, there was  
9 the issue of the injunction. I think that's very easily  
10 dealt with. You can't get an injunction by filing a motion.  
11 I've said it many times before. You have to file an  
12 adversary proceeding under Rule 7001, and you need to meet  
13 the criteria to get an injunction and you have to support it  
14 by evidence, and without that, I'll deny that. So I'm going  
15 to deny - For the foregoing reasons, I'm going to deny all  
16 three motions, and I'd ask the debtors to submit a form of  
17 order, please, under certification of counsel.

18 MR. BRADY: Your Honor, we will prepare forms of  
19 order for each motion.

20 THE COURT: I think that turns me to cash  
21 collateral. I don't have those papers. I know they came  
22 over yesterday in connection with the motion to shorten,  
23 which I granted, but I didn't actually save them, so -

24 MR. WAITE: Your Honor, I can hand up - I have a  
25 copy of the motion and a copy of the order; is that helpful

**EXHIBIT 8**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE: . Case No. 08-10960 (KG)  
IDLEAIRE TECHNOLOGIES .  
CORPORATION, . 824 North Market Street  
Wilmington, DE 19801  
Debtor. . June 13, 2008  
4:03 p.m.

TRANSCRIPT OF EXAMINER MOTION  
BEFORE HONORABLE KEVIN GROSS  
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor: Sullivan Hazeltine Allinson, LLC  
By: WILLIAM D. SULLIVAN, ESQ.  
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Holland & Knight, LLP  
By: JOHN J. MONAGHAN, ESQ.  
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Audio Operator: Leslie Murin

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(609) 586-2311 Fax No. (609) 587-3599

1 THE COURT: Good afternoon.

2 MS. CHRISTIAN: Good afternoon. We are counsel for  
3 Wells Fargo Bank National Association as Indenture Trustee and  
4 Collateral Agent for the debtors' 13 percent senior secured  
5 notes.

6 THE COURT: Yes.

7 MS. CHRISTIAN: Your Honor, we join in the Majority  
8 Secured Noteholder Group's objection, and respectfully request  
9 that the U.S. Trustee's motion for appointment of an examiner  
10 be denied or, alternatively, that the motion be adjourned until  
11 a sale process is complete.

12 THE COURT: Thank you.

13 MS. CHRISTIAN: Thank you.

14 THE COURT: Thank you for that. Well, I have read  
15 all of the submissions, a lot of the underlying cases. We have  
16 a very and unusually, I think, complete record in this case at  
17 this point. I even went back and read legislative history, and  
18 I am going to deny the motion for the appointment of the  
19 examiner.

20 I do take note of the fact that on the first day of  
21 this case Mr. Buchbinder stood here all alone virtually and  
22 heroically, I think, argued the points that have made the way  
23 now for a Creditors' Committee to step in and continue, I don't  
24 want to say necessarily the fight, but certainly, the  
25 investigation, and I think the one thing that's clear is it's

1 somewhat unclear whether or not from the cases Section  
2 1104(c)(2) of the Code mandatorily requires the appointment of  
3 an examiner whereas here the debts exceed \$5 million. There  
4 are some persuasive decisions on both sides.

5 In fact, in one case that I read I thought that was  
6 particularly well written, Judge Wedoff of the Northern  
7 District of Illinois in the In re: UAL case found that it was  
8 mandatory. But in this district the cases have almost  
9 consistently held otherwise. Judge Walsh in S.A.  
10 Telecommunications found that the provision is not mandatory.  
11 I don't think that it is mandatory based upon my reading of the  
12 legislative history, and just as the parties have pointed out,  
13 the language of the statute itself and, particularly, the as  
14 appropriate clause.

15 And I also noted that in another case we had a  
16 visiting judge, Judge Newsome, it was the AC&S case in which  
17 Judge Newsome, although he found that the appointment of an  
18 examiner in these circumstances is mandatory, he told the  
19 examiner that he wasn't going to do any work, and, in fact, I  
20 think he used the expression not a penny for the examiner.

21 So I'm not about to really undertake a futile act or  
22 appointment someone who is not going to be taking action,  
23 because we have, I think, highly competent counsel, and now  
24 I've learned a financial advisor -- highly competent financial  
25 advisor representing the Creditors' Committee and doing the

1 very investigation that an examiner would be doing under these  
2 circumstances, and I'm similarly persuaded by the fact that not  
3 only is an examiner appropriate here, but it probably would be  
4 inappropriate given the speed with which the case is  
5 progressing and the work that's already been done by the  
6 Committee, and the fact that negotiations are about to begin.  
7 I just think the record is just full, replete with evidence  
8 that the Committee's doing a very, very capable job.

9           In addition, I will also note that the Court  
10 recently, at the request of the debtor, appointed counsel for  
11 outside directors, and I think that may have some significance,  
12 and perhaps the Court will hear from the outside directors as  
13 to their views on the transactions.

14           And the bottom line is this. We're going to have a  
15 sale hearing. It's going to be a strenuous sale hearing, I  
16 suspect. And to the extent the Committee and any other  
17 interested parties have not been provided cooperation in their  
18 investigation, to the extent there hasn't been a very  
19 significant shopping of this, marketing of this company, all of  
20 that is going to make it much more difficult for the Court to  
21 approve a sale, and the Court's agenda, speaking of agendas, in  
22 this case is that there be a complete record upon which the  
23 Court is able to make a determination that the sale is fair.  
24 That will be happening, and, obviously, the more cooperation  
25 that there is with the Committee and the United States Trustee

1 and between the debtor and the bondholders, on the one hand,  
2 and them on the other, I think the more likely it may be that  
3 the Court is in a position upon reviewing all of the facts to  
4 approve a sale.

5           So the expense of an examiner is unwarranted here,  
6 and I will, therefore, deny the motion with great respect for  
7 the United States Trustee's Office and its maintenance really  
8 of the integrity of the bankruptcy system here, and -- but all  
9 in all, I think the motion has to be denied under these  
10 circumstances and will be. And I will enter an order denying  
11 the motion. Mr. Minuti, anything further, sir?

12           MR. MINUTI: Your Honor, if I could, just one  
13 housekeeping matter.

14           THE COURT: Yes.

15           MR. MINUTI: Counsel for the noteholders had touched  
16 on this, and I wanted to put it on the record and get Your  
17 Honor's approval. Your Honor, in light of Your Honor's denial,  
18 we will be preparing a stipulation that increases the carve out  
19 as --

20           THE COURT: Yes.

21           MR. MINUTI: -- as well as changes some of the dates  
22 in the interim financing order subject to us having further  
23 negotiations before the final. But there were two dates, Your  
24 Honor, that we were concerned of, and we wanted to put on the  
25 record the continuance of those and ask Your Honor to so order



1 them, if you're inclined to do that.

2           The first date, Your Honor, in the interim order was  
3 the deadline -- well, it's called the investigation termination  
4 date. Under the interim order it's June 20th.

5           THE COURT: Yes.

6           MR. MINUTI: We've agreed, Your Honor, to extend that  
7 to July 1 --

8           THE COURT: Okay.

9           MR. MINUTI: -- and so I would -- we will include  
10 that in the stipulation, but I would ask that Your Honor also  
11 so order that, because it is an order, and we'd like that  
12 extended, so we don't have the pressure of having that deadline  
13 upon us.

14           The other deadline, Your Honor, that's important to  
15 extend is there's a deadline by which the final DIP order needs  
16 to be entered, and because we had pushed the final DIP to the  
17 24th, the dates are a little bit off. So we need to change  
18 that deadline by which the final order needs to be entered to  
19 June 24th, which is the final DIP hearing.

20           And then there's a further deadline by which that  
21 order has to become final, and it would be -- it would be ten  
22 business -- ten days, but I think that falls on the July 4th  
23 weekend, so I think we'd go to the 7th. So we need to extend  
24 those dates. If Your Honor could so order the record, and then  
25 we'll submit the stipulation. I'm looking at the bondholders

**EXHIBIT 9**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE: Chapter 11  
CRED INC., et al., Case No. 20-12836 (JTD)  
Courtroom No. 5  
824 North Market Street  
Wilmington, Delaware 19801  
Debtors. December 18, 2020  
9:30 A.M.

TRANSCRIPT OF TELEPHONIC SECOND DAY HEARING  
BEFORE THE HONORABLE JOHN T. DORSEY  
UNITED STATES BANKRUPTCY JUDGE

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MATTERS GOING FORWARD:

**Cash Management.** Motion to Debtors to (A) Continue to Operate their Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, and (D) Continue to Perform Intercompany Transactions; (II) Granting Administrative Expense Status to Post Petition Intercompany Balances; (III) Waiving Requirements of Section 345(b) of the Bankruptcy Code; and (IV) Granting Related Relief [Docket No. 7, 11/08/20]

**Ruling: Order Entered**

**Employee Wages.** Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Pay Employee Obligations and (B) Continue Employee Benefit Programs, and (II) Granting Related Relief [Docket No. 11, 11/08/20]

**Ruling: Order Entered**

**Motion to Extend.** Debtors' Motion for Entry of Order Extending Time to File Schedules and Statements of Financial Affairs [Docket No. 67, 11/18/20]

**Ruling: Order Entered**

**Bar Date Motion.** Motion of Debtors, Pursuant to Bankruptcy Code Sections 105(a), 502, and 503 and Bankruptcy Rule 2002, for Entry of an Order (I) Fixing Deadline for Filing Proofs of Claim and (II) Approving Form and Manner of Notice Thereof [Docket No. 52, 11/17/20]

**Ruling: 128**

**Bid Procedures Motion.** Debtors' Motion for Entry of Orders (I) (A) Approving Bidding Procedures, (B) Scheduling an Auction and Sale Hearing and Approving Form and Manner of Notice Thereof, and (C) Approving Assumption and Assignment Procedures and Form and Manner of Notice Thereof; and (II) Authorizing (A) the Sale(s), Free and Clear of all Liens, Claims, Interests, and Encumbrances, and (B) Assumption and Assignment of Executory Contracts and Unexpired Leases [Docket No. 65, 11/18/20]

**Ruling: Order Entered**

**MACCO Retention Application.** Debtors' Application for Entry of an Order Authorizing Employment and Retention of MACCO Restructuring Group LLC as Financial Advisor for Debtors, Effective Nunc Pro Tunc to Petition Date [Docket No. 57, 11/17/20]

**Ruling: Order Entered**

**Teneo Retention Application.** Debtors' Application for Entry of an Order Authorizing Employment and Retention of Teneo Capital LLC as Investment Banker for Debtors, Effective Nunc Pro Tunc to November 16, 2020 [Docket No. 63, 11/18/20]

**Ruling: Order Entered**

**Paul Hastings Retention Application.** Debtors' Application for Entry of an Order Authorizing Employment and Retention of Paul Hastings LLP as Counsel to Debtors, Effective as of Petition Date [Docket No. 64, 11/18/20]

**Ruling: Taken Under Advisement**

**Sonoran Capital Retention Application.** Debtors' Motion for Entry of an Order (I) Authorizing Employment and Retention of Sonoran Capital Advisors, LLC to Provide Debtors a Chief Restructuring Officers and Certain Additional Personnel and (II) Designating Matthew Foster as Debtors' Chief Restructuring Officer [Docket No. 95, 12/1/20]

**Ruling: Taken Under Advisement**

**Creditor List.** Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing Debtors to File a Consolidated List of Debtors' 30 Largest Unsecured Creditors, (II) Authorizing Debtors to Serve Certain Parties by E-Mail, (III) Authorizing Debtors to Redact or Withhold Publication of Certain Personal Identification Information, and (IV) Granting Related Relief [Docket No. 6, 11/08/20]

**Motion to Seal.** Motion to File Under Seal Certain Confidential Information Pursuant to Order (I) Authorizing Debtors to File A Consolidated List of Debtors 30 Largest Unsecured Creditors, (II) Authorizing Debtors to Serve Certain Parties by E-Mail, (III) Authorizing Debtors to Redact or Withhold Publication of Certain Personal Identification Information On An Interim Basis, And (IV) Granting Related Relief [Docket No. 61, 11/18/20]

**Ruling: Orders Entered**

**Motion to Convert.** Motion of Krzysztof Majdak and Philippe Godineau for Entry of an Order Pursuant to 11 U.S.C. § 1112(b) (I) Dismissing the Cases; (II) Converting the Cases to a Chapter 7 Liquidation; or (III) Appointing a Chapter 11 Trustee [Docket No. 62, 11/18/20]

**Ruling: 94**

DEBTORS' WITNESS (s)

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**PABLO BONJOUR**

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EXHIBITS:

	<u>ID</u>	<u>Rec'd</u>
Declaration of Daniel Schatt		10
Declaration of Christopher Wu		15



1	Declaration of Pablo Bonjour	35
2	Debtor's Exhibit 38 - Thirteen Week Cash Forecast	41
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1 (Proceedings commenced at 9:34 a.m.)

2 OPERATOR: The record has begun and we are now  
3 live.

4 THE COURT: Thank you.

5 Good morning, everyone. This is Judge Dorsey.  
6 We're on the record in Cred, Inc.; Case No. 20-12836.

7 Before we begin this morning, I just want to let  
8 everybody know that we have until noon today and then I will  
9 have to stop. So, we will get as far as we can today.  
10 Hopefully we can get through, at least, the current motions  
11 we have been talking about; the motions to convert or to  
12 appoint a Chapter 11 Trustee.

13 Also, a reminder for people in the waiting room,  
14 you have to use your proper name and it has to be able to be  
15 compared to the CourtCall sheet or we do not let you in, in  
16 order to avoid people trying to gain access to disrupt the  
17 proceedings.

18 Also, we have fifty-one people on the call, on the  
19 Zoom today. So, if you want to be heard on an issue please  
20 us the raise your hand function on Zoom which you can access  
21 by clicking on "Participants" on the bottom of the Zoom  
22 screen, it brings up the dialog box and one of the options is  
23 "Raise Your Hand" and then I can identify who wants to speak.  
24 It also moves you to the top left corner of my screen so it  
25 makes it easier for me to identify who is talking.

1           So with that, yesterday we were in the middle of  
2 the debtor's case in chief. I believe we finished the  
3 examination of Mr. Lyon. And I will go ahead and turn it  
4 over to Mr. Grogan. Are you going to handle the next  
5 witness?

6           MR. GROGAN: Yes, Your Honor. Thank you very  
7 much. James Grogan from Paul Hastings on behalf of the  
8 debtors for the record.

9           Your Honor, before we call the first witness I did  
10 want to let the court know that overnight we reached  
11 agreement with the U.S. Trustee on how to proceed with Mr.  
12 Schatt's testimony.

13           First, I do apologize that we were unable to get  
14 him to testify live; that is on us, and I just apologize to  
15 the court. I'm sorry that happened.

16           The accommodation we have reached is that we're  
17 going to submit his deposition transcript in full. I think  
18 that Mr. McMahon was okay with that. I will let him respond.

19           THE COURT: Mr. McMahon?

20           MR. MCMAHON: Your Honor, good morning. Joseph  
21 McMahon for the United States Trustee.

22           That is acceptable to the U.S. Trustee, Your  
23 Honor.

24           THE COURT: Okay. So, I will admit the deposition  
25 transcript of Mr. Schatt in its entirety. What was the

1 exhibit number for that one, Mr. McMahon?

2 MR. MCMAHON: One moment, Your Honor. I believe  
3 it was -- it's Exhibit U.S. Trustee 18, Your Honor.

4 THE COURT: All right. U.S.T. Exhibit 18 is  
5 admitted.

6 (Declaration of Daniel Schatt, received into evidence)

7 MR. MCMAHON: Thank you, Your Honor.

8 MR. GROGAN: Thank you, Your Honor.

9 Your Honor, our first live witness, then, will be  
10 Christopher Wu from Teneo.

11 THE COURT: Okay. Mr. Wu, are you on Zoom?

12 MR. WU: Yes, I am.

13 THE COURT: There we go. Mr. Wu, can you place  
14 your -- raise your right hand and state your full name for  
15 the record, and spell your last name please.

16 MR. WU: My name is Christopher Wu. My last name  
17 is spelled W-U.

18 CHRISTOPHER WU, DEBTOR WITNESS, SWORN

19 THE COURT: Mr. Grogan, you may proceed.

20 MR. GROGAN: Thank you.

21 DIRECT EXAMINATION

22 BY MR. GROGAN:

23 Q Mr. Wu, can you tell the court, you know, where you  
24 work and what your experience is?

25 A My name is Chris Wu. I serve as president and senior

1 managing director of Teneo Capital. And I run the  
2 restructuring group at my firm. I have been in my capacity  
3 at Teneo for the last four years. I have been an investment  
4 banker for twenty-five years. The first six years of my  
5 career were with JPMorgan in the M&A group. And the last  
6 nineteen were focused on distress and restructuring  
7 investment banking. For fourteen years I worked at a mid-  
8 market boutique by the name of Carl Marks where I served as  
9 co-manager and member of the management committee of Carl  
10 Marks Advisors before coming to Teneo four years ago.

11 Q Thank you.

12 How many Section 363 sales have you run, if you have an  
13 estimate?

14 A Well, I personally managed over a hundred restructuring  
15 engagements of which about half, around fifty, have been in-  
16 court 363 sales or plan sales on behalf of both debtors and  
17 creditors. On behalf of debtors I have certainly run over  
18 twenty.

19 Q And have you handled DIP financings, post-petition  
20 financings?

21 A I have. I have originated and structured numerous DIP  
22 financings; too many for me to recall.

23 Q I understand.

24 So what was the -- can you tell the court a little bit  
25 about the purpose of your engagement in this case?

1 A Yes. I was engaged in order to market the debtor's  
2 business as a going concern and canvass the market for  
3 strategic interest principally. Working with me on this  
4 engagement are some colleagues from my firm; notably, experts  
5 in FinTech as well as a subject matter expert in crypto. And  
6 we have solicited interest from a variety of different spaces  
7 including crypto, as well as FinTech, as well as asset  
8 managers and brokerages in order to elicit interests for  
9 credit as a going concern. I was also engaged in order to  
10 obtain DIP financing as well as exit financing.

11 Q Thank you.

12 How is the asset sale process going? Have you started  
13 and where does it stand currently?

14 A So we were retained by the debtor's mid-November and it  
15 became clear to me, personally, immediately that this was an  
16 urgent situation in which we needed to run a very expedited  
17 sale process for a variety of different reasons.

18 So, you know, within my own field of experience I can  
19 certainly testify that we're running a more expedited process  
20 then I can recall in my career. That being said, there were  
21 already four companies that had solicited Cred as we were  
22 being retained and we immediately engaged with those four  
23 parties. And we were in the market, maybe a week, soliciting  
24 other interests.

25 So, you know, in my view we had a fairly active process

1 of interested parties. We had reached out to over eighty  
2 parties of whom twelve have signed non-disclosure engagements  
3 and we are -- we have a data room in which bidders are  
4 actively involved in. And, you know, obviously, the deadline  
5 to submit an offer to serve as a stalking horse is fairly  
6 imminent. It's early in the new year. So, we are actively  
7 in a stalking horse identification/selection process.

8 Q Thank you.

9 What do you think the appointment of a trustee would be  
10 on that process?

11 A In my opinion the appointment of a Chapter 11 Trustee  
12 would delay things. It's hard to predict, but I would think  
13 that a Chapter 11 Trustee would still want to, you know, reap  
14 whatever benefits we may produce as a result of the sale  
15 process in any case. So, we would want to continue with that  
16 process, but it would be up to, obviously, the trustee to  
17 determine the best course of action at that point in time.

18 Q And you testified earlier that you're running an  
19 expedited process here. Why is that?

20 A Well I have had some experience with FinTech  
21 (indiscernible). I have had some experience with people  
22 intensive, IP intensive businesses. And it's important to  
23 hold the business together in order to attract interest as a  
24 going concern. You know, in my own view strategic bidders  
25 (indiscernible) this on or create such a platform on its own

1 it would take time, money and knowledge.

2       So, I think that is part of what we are marketing in  
3 addition to a framework of operating in the United States  
4 with licenses (indiscernible) operating framework to learn  
5 crypto which is still (indiscernible) industry. And the  
6 utility, clearly, of learning crypto. A lot of investors are  
7 very much of a buying mentality. So, getting it done in  
8 crypto is still viewed as an important function as the market  
9 develops.

10 Q       Has the -- are prospective bidders aware of the motions  
11 that are pending to appoint a trustee?

12 A       Certainly the bidders and certainly the lenders most  
13 certainly are aware. I have not asked everyone if they are  
14 watching the courtroom proceedings, but I have been asked on  
15 many of them, you know, what, in my opinion, is happening.  
16 And they are observing these proceedings. In some cases I  
17 believe it's led to some delay in terms of galvanizing their  
18 activity.

19       I sense that there is a little bit of wait and see  
20 approach in some of the comments by other witnesses have not  
21 necessarily been helpful to the process.

22               MR. GROGAN: Thank you, Mr. Wu.

23               Your Honor, that is all the questions I have for  
24 Mr. Wu in terms of live testimony. I also would like to move  
25 to introduce his declaration which was filed at Docket No.



1 109-4

2 THE COURT: Is there any objection?

3 (No verbal response)

4 THE COURT: Okay. It's admitted without  
5 objection.

6 (Declaration of Christopher Wu, received into evidence)

7 MR. GROGAN: I will yield the witness.

8 THE COURT: Mr. McMahon, any cross?

9 MR. MCMAHON: Very briefly, Your Honor.

10 CROSS EXAMINATION

11 BY MR. MCMAHON:

12 Q Mr. Wu, good morning.

13 The Chapter 11 Trustee, if appointed, would have the  
14 option of continuing the sale process, correct?

15 A I think that would be up to the Chapter 11 Trustee.  
16 Certainly, we would avail ourselves to the extent that our  
17 services are needed and deemed relevant for the debtors.

18 MR. MCMAHON: No further questions, Your Honor.

19 THE COURT: Thank you, Mr. McMahon.

20 Mr. Sarachek, any cross?

21 MR. SARACHEK: Yes.

22 CROSS EXAMINATION

23 BY MR. SARACHEK:

24 Q Mr. Wu, good morning.

25 Are you familiar with Celsius, BlockFi, and Genesis?

1 A I'm familiar with them.

2 Q How does this debtor -- are they competitors to this  
3 debtor?

4 MR. GROGAN: Objection; outside the scope of  
5 direct.

6 THE COURT: Overruled. You can answer, Mr. Wu.

7 THE WITNESS: I am certainly not an expert in each  
8 of those companies, so I am not qualified to comment on the  
9 nature of those companies and how they engage business. My  
10 general understanding is that there are most certainly areas  
11 of overlap with the debtors.

12 BY MR. SARACHEK:

13 Q What is the unique IP that this debtor has that  
14 Celsius, BlockFi, and Genesis don't have?

15 A I think that is also out of the scope of my expertise  
16 and I'm not in a position to differentiate business models.  
17 You know, I do think that there are elements of the business  
18 that are interesting to such party, but beyond that I really  
19 can't speculate as to what would be in such party's -- you  
20 know, what is in their mind.

21 Q You're running the sale process, correct?

22 A Correct.

23 Q What are you marketing then?

24 A Well, we're marketing approximately (indiscernible)  
25 employees. Seven or eight of them are in the engineering

1 functions and technical functions. Several of them are in  
2 the product and operations. As I testified earlier there is,  
3 you know, a scope of operations in which the lender lends  
4 crypto, has the license to lend in three states. They have  
5 customers that are over 100,000. They have KYC  
6 (indiscernible). They have a number of active users and they  
7 have their own future of in terms of utility tokens. So, it  
8 certainly was a leader in crypto lending amongst a handful of  
9 companies. And (indiscernible).

10 Q But the debtor isn't lending now, right?

11 A The debtor is not lending now.

12 Q So there is really no -- you said one of the things  
13 you're marketing is these licenses which, presumably, require  
14 state approval and there is no ongoing lending operations  
15 going on right now, correct?

16 A Correct.

17 Q Are any of the parties that you are talking to  
18 creditors of the debtor?

19 A Not to my knowledge, but even if they were I wouldn't  
20 be in a position to disclose that.

21 MR. SARACHEK: I do think it's relevant, Your  
22 Honor.

23 BY MR. SARACHEK:

24 Q Are any of the parties that you're talking to insiders  
25 of the debtor?

1 (No verbal response)

2 Q Do you know what the word "insider" means?

3 A Yes, I do. I'll go with the same response which is the  
4 truth. Not to my knowledge, but even if they were I wouldn't  
5 be in a position to disclose that to you.

6 MR. SARACHEK: Your Honor, I think it's relevant.

7 THE COURT: I think what Mr. Wu is saying is he's  
8 not aware whether any of them are insiders or whether any of  
9 them are competitors, but he is not in a position -- even if  
10 he did know that they were he's not in a position to disclose  
11 who they are because its confidential at this time because  
12 they're trying to market the company. We don't want to  
13 disclose who the potential bidders are publicly.

14 BY MR. SARACHEK:

15 Q Mr. Wu, have you worked with Chapter 11 Trustees  
16 before?

17 A I have not.

18 Q Do you have any reason to believe that a Chapter 11  
19 Trustee wouldn't do what's in the best interest of the  
20 debtor?

21 A I don't, but my knowledge isn't based on personal  
22 experience. As I just said I have not worked with a Chapter  
23 11 Trustee.

24 Q Are you aware with respect to Cred Capital that James  
25 Alexander has raised the issue that the assets of Cred

1 Capital are not the debtors and that the debtor did not have  
2 authority to file?

3 MR. GROGAN: Objection, Your Honor; outside the  
4 scope of direct.

5 THE COURT: Overruled.

6 MR. EVANS: This is Joe Evans from the committee.  
7 Objection; hearsay, Your Honor.

8 THE COURT: I don't see how there is any hearsay.  
9 He's asking him if he has knowledge of it.

10 Go ahead, Mr. Wu, you can answer.

11 THE WITNESS: All right. Can you repeat the  
12 question, Mr. Sarachek?

13 BY MR. SARACHEK:

14 Q Sure, Mr. Wu.

15 Are you aware that James Alexander has raised in court  
16 pleadings, in filings, that Cred Capital -- that the debtor  
17 did not have authority -- the debtor's directors did not have  
18 authority to file Cred Capital and, thus, those assets,  
19 arguably, are not property of the estate if the court so  
20 rules?

21 A I'm aware of the issue.

22 Q Have any parties -- have any prospective buyers raised  
23 this issue to you as a reason that the debtor's assets might  
24 be less?

25 A No, none have.

1 Q Are you aware of the fraud allegations that have been  
2 raised by the debtor in the bankruptcy case?

3 A I'm aware.

4 Q Have any parties raised the fraud issues to you with  
5 respect to the lending licenses?

6 A None have.

7 Q I'm sorry?

8 A None have.

9 Q Are you aware of the motion filed by UpgradeYa with  
10 respect to the Bitcoin collateral that they assert is their  
11 property?

12 A I have not reviewed their motion. So, I am not  
13 specifically informed.

14 Q So you are not aware that collateral -- that the debtor  
15 is asserting may not be theirs?

16 A I have no idea --

17 MR. GROGAN: Objection. It misstates -- excuse me.  
18 Objection; misstates his earlier testimony.

19 THE COURT: Sustained.

20 BY MR. SARACHEK:

21 Q How will effect a sale, Mr. Wu, if UpgradeYa is  
22 successful in their lift stay motion?

23 MR. GROGAN: Objection; lack of foundation.

24 THE WITNESS: I told you --

25 THE COURT: Hold on, Mr. Wu. Don't respond. You

1 have an objection from your counsel.

2 Mr. Grogan?

3 MR. GROGAN: Objection; lack of foundation, Your  
4 Honor.

5 THE COURT: Sustained.

6 BY MR. SARACHEK:

7 Q Mr. Wu, are you aware that UpgradeYa has asserted an  
8 interest in Bitcoin that is in the debtor's possession?

9 A I actually wasn't. So, I'm repeating my answer again.

10 Q Are the parties that you're talking to proposing to buy  
11 all assets of the debtor including any Bitcoin or other  
12 cryptocurrencies that the debtor has in its wallets?

13 A I'm not in a position to disclose that to you.

14 MR. SARACHEK: No further questions, Your Honor.

15 THE COURT: Thank you.

16 Redirect, Mr. Grogan?

17 MR. GROGAN: Thank you, Your Honor.

18 MR. PIERCE: Your Honor, I have --

19 THE COURT: Hold on a second.

20 MR. PIERCE: Your Honor, Matthew Pierce with  
21 Landis, Rath & Cobb on behalf of UpgradeYa.

22 We have a few cross examination questions for Mr.  
23 Wu if we may.

24 THE COURT: Do they relate to your motion to lift  
25 the stay or to the motions that are currently pending before

1 me?

2 MR. PIERCE: The motions that are currently  
3 pending as UpgradeYa joined in the U.S. Trustee and the  
4 movants Chapter 7 conversion motion.

5 THE COURT: All right. Go ahead.

6 CROSS EXAMINATION

7 BY MR. PIERCE:

8 Q Mr. Wu, the sale doesn't contemplate continuation of  
9 past business of the debtors, correct?

10 A The marketing is the platform in terms of past business  
11 practices or go-forward business practices, that would be up  
12 to the discretion of the bidder.

13 Q And if you're selling a platform that could be sold  
14 through a Chapter 7 process, correct?

15 A Anything can be sold through a Chapter 7 process.

16 Q And are you --

17 A (Indiscernible) --

18 Q -- the debtors need to sell any --

19 THE COURT: Hold on. He wasn't finished  
20 answering.

21 Go ahead, Mr. Wu.

22 THE WITNESS: I said anything can be sold through  
23 a Chapter 7 process if there's a (indiscernible) values or  
24 outcomes.

25 BY MR. PIERCE:



1 Q But it is possible that they could be sold through a  
2 Chapter 7 process?

3 A Of course.

4 Q And are you seeking to sell any of UpgradeYa's assets  
5 or claims against the estate?

6 A As I testified before I haven't read your client's  
7 motion, so I am not familiar with the nature of UpgradeYa's  
8 claims.

9 Q And are the debtors -- sorry, continue.

10 A It hasn't come up.

11 Q And just to clarify, are the debtors marketing any  
12 claims against the estate?

13 A The debtor's assets certainly are available. You know,  
14 principally, we are focused on marketing the platform, but as  
15 I mentioned before we are also soliciting interest for  
16 financing as well.

17 Q I just want to clarify, is it your testimony that the  
18 estate could be or is marketing the estate's affirmative  
19 claims against third parties?

20 A No. Obviously, our job as debtor's representatives are  
21 to maximize value for the estate/

22 Q Which means that --

23 A So --

24 Q -- it could include claims that the estate has against  
25 third parties, correct?

1 A They may or may not. (Indiscernible) in the process to  
2 determine that.

3 Q And are any of the targets of those potential claims  
4 prospective purchasers in the debtor's sale process?

5 A Not that I'm aware of, but, again, even if I was I  
6 wouldn't be in a position to disclose that.

7 Q But they could be, correct?

8 A Anything is possible.

9 MR. PIERCE: Your Honor, I don't have any further  
10 questions.

11 Just one point that I would like to clarify for  
12 the record before I cede the virtual podium is that Mr.  
13 Sarachek does not represent UpgradeYa. We are counsel to  
14 UpgradeYa and his testimony was not coordinated in any way --  
15 his questioning was not coordinated in any way with  
16 UpgradeYa. I just wanted to clarify that for the record.

17 With that, Your Honor, I'd cede the virtual  
18 podium.

19 THE COURT: All right. Mr. Grogan, any redirect?

20 MR. GROGAN: Yes, Your Honor, very quickly.

21 REDIRECT EXAMINATION

22 BY MR. GROGAN:

23 Q Mr. Wu, are you currently negotiating with Daniel  
24 Schatt to sell the business to Mr. Schatt?

25 A I am not.

1 Q Are you currently negotiating with Lu Hua, H-U-A, to  
2 sell the business to Mr. Hua?

3 A I am not.

4 Q Are you currently negotiating with Mr. Daniyal  
5 Inamullah to sell the business to Mr. Inamullah?

6 A No.

7 Q Are you currently negotiating with Mr. James Alexander  
8 to sell the business to Mr. Alexander?

9 A No.

10 Q In your experience would you expect to get a better  
11 value in Chapter 11 then Chapter 7 for these assets?

12 A I would. I would expect so.

13 MR. GROGAN: Your Honor, no further questions.

14 THE COURT: Thank you.

15 Mr. Wu, you are excused. You may step down from  
16 the virtual witness stand.

17 (Witness excused)

18 THE COURT: Mr. Grogan, your next witness.

19 MR. GROGAN: Thank you, Your Honor.

20 Your Honor, I call Pablo Bonjour to the witness  
21 stand.

22 THE COURT: Mr. Bonjour, do you want to take --  
23 are you on the Zoom? I see you there, yes. Can we --

24 MR. BONJOUR: Yes. Can you hear me okay, Judge?

25 THE COURT: I can. Mr. Bonjour, would you please

1 raise your right hand, state your full name for the record  
2 and spell your last.

3 MR. BOUNJOUR: My name is Pablo Bonjour. Last  
4 name is spelled B-O-N-J-O-U-R.

5 PABLO BONJOUR, DEBTOR WITNESS, SWORN

6 THE COURT: Mr. Grogan?

7 MR. GROGAN: Thank you.

8 DIRECT EXAMINATION

9 BY MR. GROGAN:

10 Q Mr. Bonjour, can you tell the court where you work and  
11 what your job description is?

12 A Sure. So I am a managing director at MACCO  
13 Restructuring Group. We are an interim management services  
14 company. We specialize in financial advisory services  
15 primarily to middle market companies who find themselves in  
16 either a combination of financial or operational distress.

17 Q And how long have you been working in the distressed  
18 restructuring space?

19 A So I've got about thirty years of business experience,  
20 half of that is in investment banking. I was at Oppenheimer,  
21 Lehman Brothers. At one time I owned my own propriety  
22 interest and brokerage firm, that was (indiscernible) FTC  
23 Brokerage Operation. The other half has been in consulting,  
24 starting off with advising commodities companies, turning  
25 them around eventually led me to Chapter 11's, liquidations,

1 and Chapter 7's.

2 Q And have you worked with cryptocurrency before?

3 A I have, yes. So, I also owned a business called  
4 SouthCoast Management Group. I was (indiscernible) at the  
5 time; however, for about the ten years that I ran that  
6 company we had multiple clients who engaged us in consulting  
7 for Bitcoin. We had a client out of Canada that was  
8 installing or trying to win contracts through Canada to  
9 implement, essentially, Bitcoin ATM machines at airports.

10 About three years ago I took over a company called  
11 American Financial Holdings that owns or developed its own  
12 cryptocurrency. We trademarked it. And with that entity I  
13 have applied for an international financial entity license  
14 through Puerto Rico and that's currently through the second  
15 half -- there's two parts to that process. I'm at the tail  
16 end of the first half of that.

17 Q So what have you been doing for the debtor since the  
18 case was filed?

19 A So the first thing that we did is we got in there and,  
20 you know, obviously, wanted to understand the business model,  
21 interviewed everybody, looked at the financials. To  
22 summarize what we have been doing we built a thirteen week  
23 cash-flow model. We have developed the first draft of the  
24 schedules and statements. We have also been working on MR's  
25 this week, they're almost done. We attended the IDI

1 interview. We testified there. When the CRO was appointed  
2 we also transitioned all the information that we had learned  
3 over to him, also to the independent director, Grant Lyon.

4 Q So is it fair to say that at this point you have a  
5 somewhat of an understanding of Cred's financial condition?

6 A Yes. We have -- so we have a pretty good thirteen week  
7 forecast that outlines everything fairly accurately. We also  
8 have a good understanding of where the assets or what assets  
9 they have right now.

10 Q And have you done any investigations into the  
11 prepetition financial status of the debtor?

12 A Yes. With regard to that, so when we went into a  
13 company we were waiting for them to give us their financials.  
14 After a couple of weeks of delays we actually asked for  
15 access to their online systems which they, you know, gave to  
16 us. We then realized at that point that the company had not  
17 reconciled their books throughout the year. They had  
18 actually taken all their transactions and booked them to sub-  
19 ledgers, and they did not run it up through their internal  
20 accounting system.

21 So, the debtor continues to reconcile their books. We  
22 have helped them with that. We're not reconciling it for  
23 them. What we're doing is helping them to characterize  
24 transactions properly. We then hand it over to them. They  
25 review it and then they certify that it's accurate under

1 penalty of perjury.

2 Q And who are you working wiht on that process?

3 A The lead on that, at our firm, is Paul Maniscalco.

4 He's an MD with twenty-five years of experience as a CPA.

5 He's a forensic accountant. And we have three or four other

6 people on our team. And they coordinated that effort with

7 the controller at Cred, two or three of their staff, and the

8 CFO, and COO.

9 Q And who is the current CFO at Cred?

10 A The current CFO is Scott Wiley who was recently

11 appointed after Joe Podulka, the previous Cred CFO, was let

12 go. He is with Scott (indiscernible) Capital.

13 Q And have you investigated any of the prepetition

14 cryptocurrency trades that the company engaged in?

15 A Yes. So, one of the biggest challenges that we had

16 here is really kind of a lack of information. So, part of

17 our process was to request as much information, try to find

18 as much as possible. So, that was a big part of our efforts.

19 I was able to get their 2019 trades and also some of

20 the trades for January, February, March. And we have been

21 contacted with JSP-Systems on a weekly basis and they are

22 moments away from delivering to us the most important

23 documents that we have been asking for and have been working

24 with us for the last two weeks which is all the

25 (indiscernible) which kind of show exactly what went into JSP

1 and what went out of JSP because there was, kind of, a  
2 triangular relationship between Cred, JSP, MoCredit and those  
3 three.

4 Q You heard Mr. Inamullah testify yesterday, didn't you?

5 A Yes.

6 Q Can you tell the court what your views are on the JST  
7 trade and the financial impact it had on the debtor's balance  
8 sheet?

9 A Sure. Yeah, so this is kind of a -- I mean there are a  
10 lot of things going on here. This is kind of the crux of the  
11 case and the part that for whatever reason most people have a  
12 difficult understanding. So, I just want to give a really  
13 brief background as to the business model and then what  
14 happened in March.

15 So, in summary throughout 2019 Cred, essentially, would  
16 take in Cryptocurrency from their customers Bitcoin,  
17 (indiscernible), et cetera, and what they would do is, in  
18 turn, take that crypto and either send it directly to an  
19 asset manager or more than likely what they did instead is  
20 they actually sold it first, about seventy, eighty percent of  
21 it, they converted it to fiat USD and they sent it to their  
22 primary lender at the time which was MoCredit. MoCredit was  
23 paying them sixteen percent rate of interest.

24 So, that was pretty much their business model for most  
25 of 2019 as they went into 2020. It was really during 2020



1 where they started to expand with other asset managers. The  
2 problem comes in is that while that strategy worked out  
3 pretty well for them in 2019 and beginning of 2020, the issue  
4 came in that when they would sell their crypto, about  
5 seventy, eighty percent of it, they would keep the other  
6 twenty or thirty percent and they would use that portion to  
7 buy future's contracts to hedge against that sale.

8       So to give you an example is they brought in one  
9 Bitcoin from a customer, they would then buy the equivalent  
10 of one Bitcoin future's contract. It's a simplistic way to  
11 explain it. And as long as they did that then, you know,  
12 when Bitcoin prices went up or down it would have been tandem  
13 with it. So, they were able to, kind of, hedge any potential  
14 liability risk.

15       The problem came in, in March. So from about February  
16 15th to mid-March the price of Bitcoin and other  
17 cryptocurrencies, which follows suit, dropped from 10,000 to  
18 5,000. And when it did that the hedges that (indiscernible)  
19 through JST, the future's contracts, was essentially  
20 protecting them. They got calls that they were, essentially,  
21 sold out of those positions.

22       Conversely, they also ate up the equity that they were  
23 using to actually buy those future's contracts. So,  
24 effectively, as of March 17th, 2020 Cred was, effectively,  
25 short crypto. In other words they owed their customers back

1 cryptocurrency and they didn't have the other side, the  
2 future's contracts to hedge against. The price had gone up.  
3 So, they are, essentially, making the market and based on  
4 your report that we have seen from JST on March 17th, 2020.  
5 They were, effectively, according to JST, short the market  
6 approximately \$25 million dollars' worth of cryptocurrency.

7 Q Did Cred take steps following that to implement new  
8 hedges?

9 A So the first thing that they tried to do is they  
10 reached out to MoCredit and MoCredit at the time had, you  
11 know, a substantial bulk of their assets that they  
12 transferred and they were getting paid sixteen percent rate  
13 of interest approximately. And it was at that time that  
14 MoCredit announced that because they're a Chinese company,  
15 they make micro loans to Chinese gamers, and they actually  
16 experienced the COVID-19 virus a few months before the United  
17 States, that the Chinese regulators had, essentially,  
18 provided to Chinese citizens and other businesses the, I  
19 guess, more or less temporary reprieve from having to pay  
20 back loans and no interest. Some of that was short term,  
21 some of that was supposed to go through 2020.

22 So that was the reason for, at least what Lu Hua  
23 claimed at the time as to why he couldn't return any  
24 principal. There is some truth to that. I mean we haven't  
25 verified that. We have done a little bit of research. Yes,

1 that was kind of the case in China, but we don't know that  
2 much about MoCredit. What Lu Hua did instead is he sent over  
3 300 Bitcoin, I believe, on March 14th. And so that was, kind  
4 of, his contribution to try to help Cred.

5 Q And do you know what happened with that 300 Bitcoin?

6 A So it looked like internally Cred Capital may have  
7 spent about seventy-five of it, sixty-five or seventy-five  
8 Bitcoin and then the remaining 225 Bitcoin was sent to James  
9 Alexander and he took it to, I guess, one of his own wallets  
10 or somewhere else; I'm not sure where it went, but it left  
11 the Cred eco system.

12 Q And do you know what Cred did with James Alexander  
13 after that?

14 A I believe they fired him and they engaged in litigation  
15 to try to get that Bitcoin back.

16 Q And are you familiar with a company called Quantocoin?

17 A Yes. So there is a legitimate company out there called  
18 Quantocoin and at some point, I believe, either during 2019  
19 or early 2020, I'm not sure when, Cred opened an account with  
20 what they thought was Quant Coin or Quantocoin. And they  
21 sent them 800 Bitcoin. And they had that relationship for  
22 about six months.

23 Quantocoin would send them monthly statements showing  
24 them here's your 800 Bitcoin, it's now worth 817 Bitcoin.  
25 So, you are making money. When they needed money they

1 reached out to that entity and the emails began to bounce at  
2 that point when they were requesting principal back. After a  
3 couple of weeks of not getting a response they reached out to  
4 Quantocoin and it was then that they realized that they had  
5 actually given the 800 Bitcoin to, effectively, an imposter  
6 because they had never heard of Cred and the imposter  
7 actually once of the legitimate employees names as their  
8 name. So at that point I believe they realized that that 800  
9 Bitcoin was gone and they never had it.

10 Q And are you able to roughly quantify the financial  
11 impact of the losses of the hedges, the transfer of the  
12 Bitcoin to James Alexander and the loss of the 800 Bitcoin to  
13 the fake Quantocoin on the company's balance sheet?

14 A Yes. So -- well, yeah, I mean if we take the current  
15 price -- is it okay if I use a calculator?

16 Q Sure.

17 A Okay. So the 800 Bitcoin today would be worth 18  
18 million. The biggest one, of course, is the JST conversion.  
19 The problem there is that when they converted that crypto and  
20 sent to MoCredit we know there's \$39 million at MoCredit that  
21 they received, at least, in US dollar or stablecoin.

22 So, the price range when they converted that was around  
23 3,500 Bitcoin to about 8 or 9,000 Bitcoin. So, if you take a  
24 multiple of that, it may be twofold that exposure liability  
25 cap would be probably \$60, \$70 or \$80 million which is

1 probably one of the biggest liability caps. The 300 Bitcoin  
2 would be worth almost 7 million.

3 Q Okay. These -- is there anything in that set of facts,  
4 though, other than the fact that Mr. Alexander  
5 misappropriated assets that is nefarious or, you know,  
6 outside the scope of normal business activity?

7 A Your saying not including the 800 Quantocoin?

8 Q Well let me rephrase it.

9 A Okay.

10 Q Was the JST trade an ordinary business decision by the  
11 company to effectuate?

12 A Yes.

13 Q And in your experience is it possible for companies to  
14 be defrauded by imposters who steal from them?

15 A Yes.

16 MR. GROGAN: Your Honor, I'd like to move, at this  
17 point, for the introduction of Mr. Bonjour's declaration into  
18 evidence. It was filed on the docket at No. 109-3.

19 THE COURT: Any objection?

20 (No verbal response)

21 THE COURT: Its admitted without objection.

22 (Declaration of Pablo Bonjour, received into evidence)

23 MR. GROGAN: Your Honor, I have no further  
24 questions for Mr. Bonjour.

25 THE COURT: Thank you.

1 Mr. McMahon?

2 MR. MCMAHON: Thank you, Your Honor.

3 CROSS EXAMINATION

4 BY MR. MCMAHON:

5 Q Mr. Bonjour, good morning.

6 A Good morning.

7 MR. MCMAHON: Could we pull-up Debtor Exhibit 38?

8 MR. PROUTY: Your Honor, this is Austin Prouty  
9 with Paul Hastings. Can I request screen sharing permission?

10 THE COURT: Yes, we will get that for you.

11 MR. PROUTY: Thank you, Your Honor.

12 BY MR. MCMAHON:

13 Q Mr. Bonjour, did your firm prepare this thirteen week  
14 cash forecast?

15 A Yes, we did.

16 Q Okay. Could we scroll down to the actual sheet?

17 Thank you. And I don't know if there is a way to make  
18 those numbers a bit bigger.

19 All right. Mr. Bonjour, I just have some questions  
20 regarding this for you.

21 A Sure.

22 Q First, the term in-flows as opposed to income is used  
23 on this exhibit. Can you tell me why?

24 A Well the in-flows we wanted to capture knowing that we  
25 were going to get in turn of capital and that the business

1 was technically not an operation. We wanted to properly  
2 quantify any incoming either revenue or money of inflows.

3 Q Okay. And if we go to -- I want to take a look at the  
4 in-flows column for a second.

5 A Sure.

6 Q The term "asset management redemption" what does that  
7 mean?

8 A Where are you seeing that? Which line?

9 Q Line Number 1 under in-flows.

10 A Oh, okay. So, these are the asset managers that are  
11 returning or due to return cryptocurrency and/or fiat  
12 currency back to Cred.

13 Q So, we're talking about assets that were estate  
14 property as of the petition date being returned to the  
15 debtor's control?

16 A Yes. Correct.

17 Q All right. And the line that's labeled cryptocurrency  
18 conversions in (purchased). Can you explain to the court  
19 what that line means?

20 A One second. Cryptocurrency conversions?

21 Q Correct.

22 A Okay. Can we come back to that one?

23 Q I guess. Sure.

24 A I don't want to give the wrong answer. I know from a  
25 10,000 foot level, but I don't want to guess. So, if we can

1 keep going I will -- when it comes I will give you the  
2 answer.

3 Q Okay. But if we go to the totals column all the way on  
4 the right of the screen, basically, the debtor's source of  
5 operating during these bankruptcy cases primarily comes from  
6 those conversions, correct, as a primary matter?

7 A Yes. Correct.

8 Q And then, you know, the asset management redemptions  
9 are also a big category, but they are the third largest in  
10 that range. Then if we take a look for the --

11 A Yes, I'm sorry. Go ahead.

12 Q The third largest category for the inflows is the  
13 interest earned from MoCredit and Elivar [phonetic]. Those  
14 are loan repayments, right?

15 A Correct. Those are interest payments on MoCredit and  
16 Elivar.

17 Q And they're subject to, I guess, customary commercial  
18 risk, right?

19 A Correct.

20 Q I mean the estates have already, I guess, indicated to  
21 Mr. Hua that there is a potential for litigation involving  
22 MoCredit, correct?

23 A Correct.

24 Q And there's a possibility to Mr. Hua, basically, stops  
25 paying interest, correct?



1 A That's a possibility.

2 Q Let's take a look at the in-flows -- strike that.

3 I want to take a look at the operating disbursement  
4 Lines 5, 6 and 7.

5 A Okay.

6 Q Now would it be fair to say, sir, that these lines,  
7 basically, reflect the cost of maintaining the platform?

8 A Yes. Correct.

9 Q Okay. And they're projected out as if the debtors will  
10 be carrying the platform through March 5th, correct?

11 A Yes.

12 Q All right. And if they were to do that, sir, if I  
13 understand correctly the -- its \$1,955,040 figure there would  
14 be the cost of doing so, correct?

15 A Yes. I mean I can't really see it, but I'm taking your  
16 word for it.

17 Q Okay.

18 A That sounds about right.

19 Q So let's now go to the professional fees --

20 A Okay.

21 Q -- section.

22 A Okay.

23 Q So, first, your firm put together these numbers?

24 A Yes.

25 Q All right. And is there a series of like, I guess,

1 assumptions -- strike that.

2 Let me ask a first question. Do they include both the  
3 debtors and the professional -- and the committee's  
4 professionals?

5 A I believe they do.

6 Q Okay. And with respect to that, the numbers that are  
7 here, if we go all the way over to the right you see the  
8 number at the end there it's projected the professional fees  
9 will be \$5,587,081, correct?

10 A Yes, that is correct.

11 Q And is there any, like, from the next section down  
12 which is the accruals, are there any accruals that are not  
13 reflected in that number?

14 A Let me take a look. In the professional fees?

15 Q Correct.

16 A So if we're looking at the total I think that is the  
17 final total is the \$6.5.

18 Q Correct. Yes.

19 A There are no accruals.

20 Q So when we get to the ending cash-flow at the end of  
21 this thirteen week forecast how much cash do the debtors  
22 anticipate having at the end of the thirteen week process?

23 A Whatever that number is right there. It's hard for me  
24 to see it on the -- is that 192?

25 Q Okay.

1 MR. MCMAHON: Thank you, Mr. Bonjour. I have no  
2 further questions.

3 To the extent that, Your Honor, Exhibit 38 is not  
4 in evidence I would move for its admission.

5 THE COURT: Any objection?

6 MR. GROGAN: No, Your Honor.

7 THE COURT: Its admitted without objection.

8 (Debtor's Exhibit 38, received into evidence)

9 THE COURT: Mr. Sarachek?

10 CROSS EXAMINATION

11 BY MR. SARACHEK:

12 Q Good morning, Mr. Bonjour. Just a few questions.

13 So you testified that in March of 2020 the debtors had  
14 a major catastrophic event, correct?

15 A Yes.

16 Q How did the debtors fund their operations after March  
17 of 2020?

18 A I'm assuming they had cash on hand and other accounts,  
19 other crypto as well.

20 Q In your investigation, which you testified that you  
21 have stared or are undergoing did you see that the debtors  
22 were taking customer collateral to fund their operations?

23 A Well as a general business model they would take in  
24 the cryptocurrency from all customers equally and then  
25 immediately comingle that into one large omnibus account

1 which would then immediately go out to other asset managers  
2 like MoCredit and the like.

3 Q Are you familiar, Mr. Bonjour, with the Cred borrow  
4 program?

5 A I am.

6 Q Are you aware of UpgradeYa?

7 A I am.

8 Q Are you aware that certain customers like UpgradeYa who  
9 participated in the Cred borrow program assert that the  
10 debtor is currently holding its collateral?

11 A Yes.

12 Q Does the debtor currently have in its possession enough  
13 cryptocurrency collateral to repay all of the Cred borrow  
14 lenders?

15 A No, it does not.

16 Q You testified that you and your team were responsible  
17 for managing the debtors operations. At the first day  
18 hearing the court was provided with a number on the Bitcoin  
19 that the debtors had and subsequently the court was provided  
20 with a different number. Why was that?

21 A Okay. So a couple of things. First, we were not -- we  
22 haven't managed anything, we're just advisors. To your  
23 second question the crypto, the amount of Bitcoin that was  
24 filed on the petition date I believe was around like 90 or 94  
25 Bitcoin from memory. And subsequent to that one of the asset

1 managers on the in-flows turned back to us some of that  
2 capital which came in the form of 75 additional Bitcoin  
3 units. So we actually have right now 164 Bitcoin total,  
4 approximately.

5 Q But that is less than the amount of collateral that the  
6 Cred borrowers assert, right?

7 A Right. When you asked me that question earlier I had  
8 the 164 in mind, not the lesser amount.

9 Q Up until December 7th, 2020 Mr. Schatt, Mr. Dan Schatt  
10 was CEO of the company. What did he do in his capacity as  
11 CEO?

12 MR. GROGAN: Objection, Your Honor; lack of  
13 foundation.

14 THE COURT: Sustained.

15 MR. SARACHEK: I have no further questions.

16 THE COURT: Thank you.

17 Anyone else?

18 MR. PIERCE: Your Honor, Matthew Pierce on behalf  
19 of UpgradeYa. We have a few questions.

20 THE COURT: Go ahead, Mr. Pierce.

21 CROSS EXAMINATION

22 BY MR. PIERCE:

23 Q You're the financial advisor, correct?

24 A Yes.

25 Q And you were responsible for creating these thirteen

1 week forecasts, correct?

2 A Yes.

3 Q And it's your testimony here today that you understand  
4 the debtor's cryptocurrency conversion in-flows from a 10,000  
5 foot level, correct?

6 A Yes.

7 Q And you don't know -- that means you don't know what  
8 the in-flows consist of, correct?

9 A No. I do, I just look at the total where it says total  
10 in-flows. I trust my team.

11 Q You can't tell me today what the constituent parts of  
12 those total in-flows are, correct?

13 A I can.

14 Q Then what do the cryptocurrency conversion in-flows  
15 consist of?

16 A Those are cryptocurrency that are, essentially, being  
17 converted to generate cash-flow.

18 Q Can we bring up Debtor's Exhibit 38 please?

19 So I would just like to put your attention to the  
20 cryptocurrency conversions purchase line. Do you see that?

21 A Yes.

22 Q And five minutes ago when you were testifying with Mr.  
23 McMahon you couldn't tell us what that consisted of, is that  
24 correct?

25 A I wasn't sure.

1 Q What's changed in that five minutes?

2 A I pulled up the spreadsheet and I clicked on the cell  
3 to see where it went and it went to the next -- I couldn't  
4 see it on the laptop, its tiny.

5 Q So you --

6 A I can see the listing though.

7 Q Did you refer to Exhibit 38 as its shown here?

8 A I can't really see the exhibit here. That is why I was  
9 relying on Mr. McMahon to read off the numbers. I can't see  
10 it so I pulled up a like cash-flow model to refer to.

11 Q So you weren't referring to this document, correct?

12 A Well its almost the exact same thing.

13 MR. PIERCE: But it's different. You know, we're  
14 going to ask that the debtors produce that, what you referred  
15 to, and we're going to ask that that be introduced into  
16 evidence.

17 THE COURT: Mr. Grogan?

18 MR. GROGAN: Your Honor, I don't think this is an  
19 appropriate document request. We have already responded to  
20 all of their discovery in connection with their motion to  
21 lift the stay. And actually --

22 THE COURT: The witness referred to a document  
23 during his testimony to refresh his recollection. So that  
24 makes that document discoverable. So I am going to order you  
25 to turn it over.

1 MR. GROGAN: Okay, Your Honor.

2 BY MR. PIERCE:

3 Q All right. I am going to direct your attention to week  
4 thirteen and I will stay focused there and just have a few  
5 questions on the numbers set out there.

6 At the end of week thirteen the debtors estimate that  
7 they will have an ending cash balance of \$192,088, correct?

8 A Yes.

9 Q And at the end of week thirteen the cash balance does  
10 not reflect or is not net of the \$970,000 of accrued  
11 professional fees in week thirteen, correct?

12 A Correct.

13 Q And if I direct you towards the bottom you see the line  
14 that says net liquidity?

15 A Yes.

16 Q And net liquidity is calculated as the ending cash  
17 available plus liquid cryptocurrency asset value less post-  
18 petition accrued payables, right?

19 A Okay. The net liquidity equals the ending cash plus  
20 the liquid crypto. That's right.

21 Q Okay. So we're in agreement on what net liquidity is,  
22 correct?

23 A Yes.

24 Q Okay. So going back to the forecast week thirteen the  
25 net --



1 A One second. I'm sorry. Minus the post-petition  
2 payables accrued.

3 Q Right. So in week thirteen the debtors estimate that  
4 they will have a net liquidity shortfall of \$699,585,  
5 correct?

6 A Is that the number on the sheet right there? I can't  
7 really see it.

8 Q Can we zoom in so Mr. Bonjour can see that in week  
9 thirteen please?

10 UNIDENTIFIED SPEAKER: Is that better, Mr. Pierce?

11 MR. PIERCE: Yes, it is.

12 THE WITNESS: And that is the liquidity, yeah.

13 BY MR. PIERCE:

14 Q Just to make sure that I understand this, even if the  
15 debtors start receiving payments from MoCredit January 2021  
16 and the debtors sell all of their liquid cryptocurrency  
17 assets the debtors still estimate that they are going to have  
18 a liquidity shortfall of almost \$700,000 by March 5th. Is  
19 that correct?

20 A I believe that is correct.

21 Q And this forecast is based on estimated operating  
22 professional -- operating costs and professional fee costs,  
23 right?

24 A Yes.

25 Q And those operational costs and professional fee costs

1 they could be greater than the estimates reflected in this  
2 thirteen week forecast, correct?

3 A Correct, yeah.

4 Q And all of that has to be paid in full to confirm a  
5 plan, correct? And when I say that -- let me withdraw that  
6 question and as it a different way.

7 A Okay.

8 Q All of the post-petition accrued professional fee  
9 payments or accrued professional fee costs and post-petition  
10 operating accrued payables all that has to be paid to confirm  
11 a plan, correct?

12 A Yes.

13 Q So by March 5th it's possible that the debtor's net  
14 liquidity shortfall far exceeds what is estimated in this  
15 forecast, right?

16 A That's possible. Now since you requested the one that I  
17 was referring to we made some additional adjustments on that  
18 one. So when you see it, it's actually -- that negative  
19 number that you have here, the negative 699, on the latest  
20 one that we have is 450.

21 Q I want to correct the testimony. This isn't my number.  
22 This is your number, correct?

23 A Sure. Yeah.

24 Q This is the debtor's exhibit, correct?

25 A Right. We --

1 Q And the debtor's financial advisors --

2 THE COURT: Hold on. Let's not talk over each  
3 other.

4 Mr. Pierce, let's not talk over the witness  
5 please.

6 Do you want to finish your response?

7 THE WITNESS: Yes. Thank you, Your Honor.

8 As I was saying, we try to update it -- I mean we  
9 update it once a week officially, but we work on it daily and  
10 especially recently with the significant increase in Bitcoin  
11 we see substantial increase in valuation. So, that number  
12 and a few other adjustments that we've made have reversed  
13 that negative 699 number that you referenced to a positive  
14 450. So it's about a million dollars better right now.

15 BY MR. PIERCE:

16 Q I just want to clarify, this is the debtor's document,  
17 correct?

18 A Sure.

19 Q And this --

20 A It's a moving part.

21 Q -- \$699,585 liquidity shortfall in week five was put  
22 together by the debtors, correct?

23 A In week thirteen you mean?

24 Q Yes.

25 A You said week five.

1 Q Excuse me.

2 A You said week five.

3 Q Sorry. Let me withdraw that question and ask it again.

4 A Okay.

5 Q In this exhibit the debtor's calculated that they will  
6 have a net liquidity shortfall of \$699,585 in week thirteen,  
7 correct?

8 A Yes. That is correct.

9 MR. PIERCE: No further questions, Your Honor.

10 THE COURT: Thank you.

11 I see Mr. Silver has his hand up. Mr. Silver?

12 MR. SILVER: Yes, Your Honor. David Silver of  
13 Silver Miller. I represent several of the individual  
14 investors including Jaime Shiller. We were the counsel who  
15 did the motion to compel about a week and a half, two weeks  
16 ago.

17 THE COURT: Okay.

18 MR. SILVER: I have very few questions for Mr.  
19 Bonjour.

20 THE COURT: Are you a party to any of the  
21 currently pending motions before me?

22 MR. SILVER: Yes. We filed a partial joinder in  
23 the motion.

24 THE COURT: Which one?

25 MR. SILVER: The motion to appoint the trustee

1 with Mr. Sarachek.

2 THE COURT: All right. Go ahead.

3 CROSS EXAMINATION

4 BY MR. SILVER:

5 Q Mr. Bonjour, I just want to make sure I understood.  
6 You testified you did an analysis into Cred's financials,  
7 correct?

8 A Yes.

9 Q And you spoke with and the debtor provided you all the  
10 documents you requested, is that correct?

11 A Yes and no. So the challenge is that the debtor has  
12 not properly reconciled their books throughout the year. So,  
13 what we had to work with is the terminal value on the balance  
14 sheet. So we took, you know, current bank statements. We  
15 logged in, we looked at what they had. And then we, of  
16 course, took their expenses, we looked at that and we used  
17 that to put this together.

18 Q Do you know what a transactional ID as it relates to  
19 cryptocurrency is?

20 A You're referring to the hash?

21 Q Yes.

22 A Yes.

23 Q Okay. Were you provided the transactional ID's or hash  
24 for the transactions in 2019 and 2020 for the debtor?

25 A There -- I have seen some spreadsheets that contained

1 data. I don't know if it extends to 2019. I have seen 2020.

2 Q Did that data come from the data or did that data come  
3 from information that was provided for the motion to compel  
4 that was filed in this case?

5 A Well the spreadsheets that I have seen are from the  
6 company.

7 Q Okay. Have you been provided or have you looked into -  
8 - has your company, as part of its analysis for Cred's  
9 financial condition which you predicate your projections on,  
10 done a -- have you done an investigation into where the  
11 cryptocurrencies that relate to the transactional ID's for  
12 Cred currently sit?

13 MR. EVANS: Joe Evans for the committee.  
14 Objection; outside the scope.

15 THE COURT: Overruled.

16 THE WITNESS: So, you know, we are not doing any  
17 forensic analysis. That is not our role. Our role was as an  
18 advisor. Also, part of the challenges in their  
19 reconciliation they, essentially, downloaded their  
20 transactions into sub ledgers which are also not reconciled  
21 through 2020 and that is what the debtor is working on as we  
22 speak.

23 BY MR. SILVER:

24 Q Well are you aware of any private wallets or any  
25 wallets that are related to Cred that hold in excess of 5,000

1 Bitcoin with the present value over \$110 million?

2 A No.

3 MR. EVANS: Objection, Your Honor. Joe Evans from  
4 the committee. It assumes facts not in evidence.

5 THE COURT: Overruled.

6 THE WITNESS: No.

7 BY MR. SILVER:

8 Q When you questioned the employees to determine Cred's  
9 financial condition did you ask the individual employees  
10 about wallets that were associated with Cred?

11 A Yes. We asked them to deliver to us any and all  
12 information related to any current holdings of  
13 cryptocurrency, whether liquid or non-liquid.

14 Q But to date there has been no transactional analysis  
15 done related to the transactional ID's that were provided by  
16 the creditor to -- I'm sorry, provided by the debtor to you  
17 to reconcile that with the actual investment of my clients  
18 who invested 3,500 Bitcoin or the present value of \$77  
19 million?

20 A Correct.

21 MR. SILVER: Thank you. That is all I have.

22 THE COURT: Thank you.

23 Mr. Grogan, redirect?

24 MR. GROGAN: Thank you, Your Honor.

25 REDIRECT EXAMINATION

1 BY MR. GROGAN:

2 Q So, I want to take you back to Exhibit 38. Can we pull  
3 that back up?

4 Mr. Bonjour, I just want to make sure the record is  
5 clear. You're testimony is that in terms of the current  
6 cash-flow forecast you show a positive ending balance at the  
7 end of the thirteen weeks?

8 A Yes.

9 Q And that's based upon an updated version of this cash-  
10 flow forecast?

11 MR. EVANS: Objection.

12 THE COURT: Basis?

13 MR. EVANS: Your Honor, the basis is that they are  
14 questioning him on Exhibit 38 and asking about a document  
15 that he referred to that has not yet been produced or is in  
16 evidence about an updated cash-flow that he is referring to.

17 THE COURT: Well he already testified to it when  
18 you were cross-examining him. So, overruled. I mean he  
19 testified to the fact that the forecast has been updated and  
20 that there is now a positive cash-flow balance at the end of  
21 the thirteen weeks. He already testified to that.

22 BY MR. GROGAN:

23 Q Mr. Bonjour, you can answer the question.

24 A To clarify at the end of the thirteen week the ending  
25 cash is -- the cash-flow is 92,000 and the ending cash is



1 192,000 on the thirteen week.

2 Q Okay. Thank you.

3 Mr. Bonjour, would you expect that a Chapter 11 Trustee  
4 would hire professionals?

5 A Yes.

6 Q And so if you were doing a thirteen week cash-flow for  
7 a Chapter 11 Trustee there would be a line item here for  
8 professional fees?

9 A Yes. Correct.

10 Q Also in terms of the cash-flow forecast here have you  
11 taken into account a sale of the business at any point during  
12 this thirteen weeks?

13 A No.

14 Q And if the business were sold what impact would that  
15 have on the thirteen week cash-flow?

16 A That would provide a tremendous amount of liquidity.

17 Q Would it have any effect on the operating costs?

18 A If you sold it, no. I mean you would not increase your  
19 operating costs if you sold it. It would just be --

20 Q Would you --

21 A You would decrease, correct, because you're,  
22 essentially -- with that sale you are transferring over,  
23 fifteen to eighteen employees that currently operate that  
24 platform. So you would decrease your operating.

25 Q Thank you.

1 A It would almost practically go away.

2 MR. GROGAN: Understood. Thank you, Mr. Bonjour.

3 No further questions.

4 THE COURT: Thank you.

5 Mr. Bonjour, you are excused. Thank you.

6 THE WITNESS: Okay. Thank you.

7 (Witness excused)

8 THE COURT: Next witness, Mr. Grogan.

9 MR. GROGAN: Thank you, Your Honor.

10 The next witness we call is Matthew Foster.

11 THE COURT: Mr. Foster, are you on Zoom?

12 MR. FOSTER: I am. Can you hear me?

13 THE COURT: I can. Thank you.

14 Can you raise your right hand? State your full  
15 name for the record and spell your last.

16 MR. FOSTER: Matthew Foster, F-O-S-T-E-R.

17 MATTHEW FOSTER, DEBTOR WITNESS, SWORN

18 THE COURT: Mr. Grogan, go ahead.

19 MR. GROGAN: Thank you, Your Honor. Your Honor,

20 initially I would like to move to introduce Mr. Foster's

21 declaration into evidence which was filed at Docket No. 109-  
22 2.

23 THE COURT: Any objection?

24 (No verbal response)

25 THE COURT: Its admitted without objection.

1 (Declaration of Matthew Foster, received into evidence)

2 DIRECT EXAMINATION

3 BY MR. GROGAN:

4 Q Mr. Foster, can you introduce yourself to the court and  
5 give the court a little description of your background?

6 A Sure. I am -- this is Matthew Foster. I am a managing  
7 director and co-founder of Sonoran Capital Advisors, a  
8 distressed advisory group. Most recently I spend most of my  
9 time as a chief restructuring officer for various debtors.  
10 This is my fifth appointment as a chief restructuring officer  
11 in the last two or three years, most of which end up in some  
12 sort of 363 sale and a liquidating plan. The following  
13 pattern, basically, has been outlined for this debtor.

14 Before getting into restructuring, which I have done  
15 since 2009, I worked for a private equity on Citizens Bank  
16 which has some distressed investments. That is where I kind  
17 of cut my teeth in the distressed world. I really got into  
18 the Chapter 11 aspects starting in 2009 and, as I mentioned  
19 before, formed my own firm in 2017 with a partner.

20 Q And when did you get involved with Cred?

21 A I was hired on November 30th.

22 Q So in your -- so about two weeks ago, right? What did  
23 --

24 A A little bit more than two weeks.

25 Q What have you done in the last two weeks to get up to

1 speed?

2 A Well we rely heavily on what MACCO has done. They have  
3 been phenomenal in getting us up to speed on everything that  
4 is going on. Most importantly, as CRO, when you get in these  
5 situations particularly there are some accusations going back  
6 and forth is really gain control over the assets of the  
7 company, particularly bank accounts, those sorts of things,  
8 and making sure that we can show to all of the constituencies  
9 that there is an independent party that's been trusted by  
10 courts before that knows what he's doing and could oversee  
11 what is going on.

12 Q And are you running Cred at this point?

13 A For all intents and purposes, yes. There is no CEO  
14 anymore. The CFO, the new CFO, obviously, reports to me and  
15 overseeing this whole process, obviously, under the direction  
16 of Mr. Lyon.

17 Q Do you answer to anybody other than Mr. Lyon?

18 A No.

19 Q Are you familiar with the debtor's efforts to sell  
20 their business?

21 A Yes.

22 Q And what involvement have you had in that process?

23 A Well, obviously, we get updates from Mr. Wu and other  
24 individuals at Teneo. So, they report back to me on a  
25 frequent basis and ask for insight as to my recommendations,

1 or thoughts, or any sort of proposals that I would eventually  
2 make to Mr. Lyon as is typical. And in this process I work  
3 with investment bankers all the time. They report to me and  
4 we work to maximize the sale value so we can return as much  
5 as we possibly can to the creditors.

6 Q And have you seen any term sheets yet?

7 A I have.

8 Q And so at this point you are reviewing term sheets and  
9 working through that effort?

10 A Yes.

11 Q Are you familiar with the plan support agreement  
12 between the debtors and the committee?

13 A I am.

14 Q And what is your understanding of the plan support  
15 agreement?

16 A Well one of the important pieces that Mr. Lyon  
17 mentioned yesterday is we understand our fiduciary duty here.  
18 I understand that the unsecured creditors are out of the  
19 money and that they have a committee that has been formed and  
20 we're going to take their advice and thoughts very, very  
21 seriously because we understand their responsibilities and  
22 understand our responsibilities. So, we wanted to work in  
23 lock step with the committee to get to an outcome that  
24 benefits their constituents as well as, obviously, the entire  
25 estate. And the plan support agreement is the best way to do

1 that.

2 Q And if we're allowed to proceed with that plan support  
3 agreement what kind of a plan do you anticipate proposing for  
4 the debtors?

5 A You mean as a plan in general or as in like a plan of  
6 liquidation from a Chapter 11 plan prospective?

7 Q Yeah, the latter. What kind of a Chapter 11 plan are  
8 you going to propose?

9 A It would be a plan of liquidation or liquidating trust  
10 to be appointed. A liquidating trustee would be appointed.  
11 This is, again, very -- most of the cases that I have worked  
12 in ended up in the same way where we do a 363 sale, do it as  
13 a going concern because that is the best way to maximize the  
14 value and then if there are particularly where there are  
15 causes of action like this case where they should be pursued  
16 and we want to make sure that we preserve those rights from  
17 the trustee. So we will do everything we can to make sure  
18 that gets handed over to whoever the trustee is.

19 Q And are you going to have any say over who that trustee  
20 is?

21 A I don't believe so, no.

22 Q Who is going to make that decision?

23 A Typically it's the committee that makes the  
24 recommendation. I think sometimes the debtors have some  
25 recommendations, but typically it's the committee that

1 chooses that.

2 Q And that is the case in this plan support agreement?

3 A Yes.

4 Q Are you aware of any current discussions between the  
5 debtors and insiders of the debtor to give those insiders a  
6 release?

7 A No.

8 Q Will you give anybody a release?

9 A No.

10 MR. GROGAN: Your Honor, no further questions for  
11 this witness.

12 THE COURT: Thank you.

13 Mr. McMahon?

14 MR. MCMAHON: Very briefly, Your Honor.

15 CROSS EXAMINATION

16 BY MR. MCMAHON:

17 Q Mr. Foster, you testified that you managed to get up to  
18 speed in a couple of weeks, correct?

19 A It's like drinking from a firehose. Yes, we're getting  
20 there.

21 Q And the committee was able to be appointed and get up  
22 to speed as well?

23 A Yes. We're helping them along as well.

24 Q And you have heard -- you know Mr. Lyon, correct?

25 A Correct.

1 Q And you know he's previously served as the Chapter 11  
2 Trustee, correct?

3 A Yes.

4 Q And you are confident that, you know, Mr. Lyon is a guy  
5 who can get up to speed in a situation like this pretty  
6 quickly, correct?

7 A Yes.

8 Q So its -- the power to get up to speed, you know,  
9 doesn't leave Mr. Lyon regardless of whether he is serving as  
10 Chapter 11 Trustee or not, correct?

11 A I am not sure I understand the question.

12 Q Sure. I mean Mr. Lyon is capable of getting up to  
13 speed whether he's got his Chapter 11 Trustee hat or not,  
14 correct?

15 A Yes. It depends on the individual for sure.

16 MR. MCMAHON: Great. Thank you, Your Honor. I  
17 have no further questions.

18 THE COURT: Thank you.

19 Mr. Sarachek?

20 MR. SARACHEK: I have no questions, Your Honor.

21 THE COURT: Okay. Mr. Pierce?

22 MR. PIERCE: Just a few questions, Your Honor.  
23 Thank you.

24 CROSS EXAMINATION

25 BY MR. PIERCE:



1 Q Good morning, Mr. Foster. How are you?

2 A Good. How are you?

3 Q Good. You testified that this is a going concern sale,  
4 correct?

5 A Correct.

6 Q But this isn't really a going concern sale, is it?

7 A I would argue that it is. The reason I say that is I  
8 actually -- the last case that I did in Delaware where I was  
9 CRO for a drug company that had a failed cancer drug, it  
10 didn't pass FDA approval, we sold the IP assets at three or  
11 four times what the stalking horse bid was and there was  
12 still a few employees with that company that the buyer took  
13 with them.

14 So, I think it depends on your definition of going  
15 concern. So you may want to specify that, but that is based  
16 on my opinion; their employees are a going concern from my  
17 perspective.

18 Q Well let me just clarify because Mr. Wu testified  
19 earlier that the debtors are selling a platform. Is that all  
20 they're selling?

21 A He also mentioned that there are employees that the  
22 buyers are interested in.

23 Q Do the debtors have any current operations today?

24 A Well we have employees that are doing work on a day to  
25 day basis including engineers, accountants. So from that

1 perspective, yes. It was mentioned earlier we're not out  
2 making loans like the company previously was. So, again, it  
3 depends on your definition of operations.

4 Q You can't sell people, can you?

5 A Not exactly sure what you mean by that.

6 Q Well the company doesn't have any operations, correct?

7 A Again it would depend on your definition of operations.  
8 I'm not trying to be difficult. I'm trying to get where you  
9 want me to go.

10 Q So let me try to be more clear.

11 A Okay.

12 Q Is the debtor currently engaged in any lending  
13 activity?

14 A No.

15 Q Are the debtors currently operating the Cred earn  
16 program?

17 A No.

18 Q Are the debtors currently operating their Cred borrow  
19 program?

20 A No.

21 MR. PIERCE: No further questions, Your Honor.

22 THE COURT: Okay. Mr. Silver, do you have any  
23 questions?

24 (No verbal response)

25 THE COURT: We lost Mr. Silver.

1 Mr. Grogan, back to you.

2 MR. GROGAN: Thank you, Your Honor. I have a  
3 short redirect. After my redirect, if Your Honor will permit  
4 us, Mr. Cousins got disconnected briefly, but he had a couple  
5 of follow-up questions for this particular witness and with  
6 your permission I'd like to give him an opportunity to ask  
7 those.

8 THE COURT: All right.

9 REDIRECT EXAMINATION

10 BY MR. GROGAN:

11 Q Mr. Foster, when your -- in your role as a CRO is it  
12 important to you to preserve jobs?

13 A Yeah. I mean there's two reasons for that. One is,  
14 obviously, employees are part of the constituency and that is  
15 why I got into this line of work because I want to save jobs.  
16 The second is companies are more valuable with the employees.  
17 People have value. Their intelligence. They add value to a  
18 process.

19 So, it is my experience that selling a company as a  
20 going concern with employees is the best way to maximize  
21 value in these circumstances.

22 Q Also, you heard the United States Trustee ask you a  
23 couple of questions about getting up to speed. Was MACCO an  
24 important component of getting up to speed?

25 A Absolutely. I couldn't have gotten this much

1 information this quickly without them.

2 Q And was Paul Hastings important to you in terms of  
3 getting up to speed?

4 A Absolutely.

5 MR. GROGAN: Your Honor, at this point I would  
6 like to turn the witness over to Mr. Cousins for a brief Q&A.

7 THE COURT: All right. Well, Mr. Cousins is also  
8 debtor's counsel. So I am not sure of the propriety of  
9 having two of the -- two lawyers on the same side asking  
10 questions. I am going to have to re-open it again for cross  
11 examination. So, I will allow it, but it's unusual.

12 Go ahead, Mr. Cousins.

13 MR. COUSINS: Thank you, Your Honor. Just with  
14 respect to (indiscernible) there was an exhibit.

15 REDIRECT EXAMINATION

16 BY MR. COUSINS:

17 Q Mr. Foster, do you recall Exhibit 13 from Mr. McMahon  
18 yesterday? (Indiscernible) testimony.

19 THE COURT: Mr. Cousins, you're very --

20 THE WITNESS: I --

21 THE COURT: Hold on, Mr. Foster.

22 MR. COUSINS: I'll pick-up, Your Honor.

23 THE COURT: That's better. Thank you.

24 MR. COUSINS: I'm so sorry.

25 THE COURT: Mr. Foster heard it, but I couldn't

1 hear the question.

2 MR. COUSINS: Let me restate it.

3 BY MR. COUSINS:

4 Q Mr. Foster, do you recall the exhibits that Mr.  
5 McMahon, Exhibit 13, showed Mr. Inamullah during his direct  
6 testimony regarding the relationship with Uphold. Do you  
7 recall that?

8 A I remember there -- is that the one that was a letter  
9 of release from Uphold talking about Cred and individuals  
10 there? Is that the one you are referring to?

11 Q Right. It referenced their plan to sue Cred. Do you  
12 recall that now?

13 A Yeah.

14 Q Can you just briefly explain what is the relationship  
15 between Cred and Uphold?

16 A So there are a couple things. One, Uphold had on their  
17 platform the ability for their customers. This is based on  
18 my understanding of what I have been told. I haven't gone  
19 through and clicked the buttons myself. Uphold had the  
20 ability of their customers today we're going to go and  
21 participate in this Cred program. So they could click a  
22 button, much like Mr. Inamullah said yesterday, saying we're  
23 going to participate in this CD like certificate of deposit  
24 like program. So, those customers could say I'm going to use  
25 Cred and those cryptocurrencies will get transferred to Cred

1 and go through the programs that have been mentioned before.  
2 The other thing is that Uphold is holding assets of the  
3 debtors. So, there are various cryptocurrencies that are at  
4 Uphold right now.

5 Q And Uphold hasn't sued Cred to your knowledge, is that  
6 correct?

7 A That is correct.

8 Q And what is the relationship now? How would you  
9 describe the relationship with respect to the tokens that are  
10 owed back and forth between Cred and Uphold?

11 A It's actually very cordial. I have interacted with  
12 their general counsel along with Mr. Cousins, you, and as  
13 well as their outside counsel. I think its BakerHostetler is  
14 the name of the firm. So we are currently in the process of  
15 working on a stipulation for them to transfer those assets to  
16 the debtor.

17 MR. COUSINS: Thank you very much. Your Honor,  
18 thank you for -- I know that was unusual and I'm sorry I got  
19 disconnected just immediately prior to the end of his direct.

20 THE COURT: Thank you, Mr. Cousins.

21 Let me go back then down the cross list. Mr.  
22 McMahon, does that generate any new questions for you?

23 MR. MCMAHON: It does not, Your Honor.

24 THE COURT: Mr. Sarachek?

25 MR. SARACHEK: No, Your Honor.

1 THE COURT: Mr. Pierce?

2 MR. PIERCE: No, Your Honor.

3 THE COURT: And I will ask Mr. Silver again.

4 MR. SILVER: No, Your Honor. I'm good. I  
5 apologize for being on mute before.

6 THE COURT: All right. Then Mr. Foster, you are  
7 excused.

8 THE WITNESS: Thank you.

9 (Witness excused)

10 THE COURT: Any other witnesses?

11 MR. GROGAN: Your Honor, that is the end of the  
12 debtor's testimonial presentation.

13 THE COURT: All right. So where are we? Are we  
14 going into closing or does anybody else have any other  
15 evidence they intend to introduce?

16 (No verbal response)

17 THE COURT: No takers on the evidence. So I guess  
18 we're going to closings. We're already at 11:20. How long  
19 do the parties thing they will need for closings? Mr.  
20 Grogan?

21 MR. GROGAN: Your Honor, I probably need ten  
22 minutes.

23 THE COURT: All right. Mr. McMahon?

24 MR. MCMAHON: About the same, Your Honor.

25 THE COURT: Okay. Mr. Pierce?

1 MR. PIERCE: About the same, Your Honor.

2 THE COURT: Mr. Sarachek?

3 MR. SARACHEK: I will be briefer then that.

4 THE COURT: All right. Mr. Silver?

5 MR. SILVER: I am with Mr. Sarachek. I will be  
6 briefer then that.

7 THE COURT: All right. So maybe we can get done,  
8 but I do need to take a very short break because we've been  
9 going for a while now. So let's take a five minute recess.  
10 We will reconvene at 11:25.

11 MR. EVANS: Your Honor, Joe Evans for the  
12 committee. We intend to argue as well.

13 THE COURT: All right. How long do you need?

14 MR. EVANS: The same as everyone else, about ten  
15 minutes or less.

16 THE COURT: All right. So, we're -- all right.  
17 We will see if we can get it done. We will reconvene at  
18 11:25.

19 (Resume taken at 11:20 a.m.)

20 (Proceedings resumed at 11:25 a.m.)

21 THE COURT: We'll start with the movants. Mr.  
22 McMahon.

23 MR. MCMAHON: Your Honor, good morning. Joseph  
24 McMahon for the United States Trustee.

25 At his deposition this past Monday Dan Schatt



1 testified regarding his appointment of Grant Lyon to Cred's  
2 board in November of 2020 after Lu Hua resigned as the  
3 director of Cred Inc. He indicated that it was important to  
4 have a so-called "independent" director on the board. And I  
5 asked him, independent from what? His answer was,  
6 "Independent from any connection between Cred and MoCredit"  
7 was his response.

8           The United States Trustee respectfully submits  
9 that the record establishes that there is a basis for  
10 appointing either a Chapter 11 Trustee and examiner or a  
11 Chapter 7 Trustee in these cases.

12           First, the Chapter 11 Trustee. Section 1104(a)  
13 provides two basis for appointment of a Chapter 11 Trustee.  
14 First, for cause under Section 1104(a)(1). Second, if it's  
15 in the interest of creditors any equity security holders or  
16 other interests of the estate under Section 1104(a)(2).

17           In In Re Marvel Entertainment Group, case citation  
18 140 F.3d 463, the United States Court of Appeals for the  
19 Third Circuit observed that the presumption against  
20 appointing a trustees is tied to two things. First,  
21 management, which brought the debtor to bankruptcy, must be  
22 honest, experienced and familiar with the business. Second,  
23 there has to be a reorganization; otherwise, we don't need  
24 management's operational investment.

25           I want to quote from the Third Circuit's opinion

1 with respect to this point so that the record is clear. In  
2 the usual Chapter 11 proceeding the debtor remains in  
3 possession throughout reorganization because, and this is an  
4 internal quote,

5 "Current management is generally best suited to  
6 orchestrate the process of rehabilitation for the benefit of  
7 creditors and other interests of the estate."

8 Thus, the basis for the strong presumption against  
9 appointing an outside trustee is that there is often no need  
10 for one. Quote again,

11 "The debtor-in-possession is a fiduciary of the  
12 creditors and as a result has an obligation to refrain from  
13 acting in a manner which could damage the estate or hinder a  
14 successful reorganization."

15 The strong presumption also finds its basis in the  
16 debtor-in-possession's usual familiarity with the business it  
17 already had been managing at the time of the bankruptcy  
18 filing often making it the best party to conduct operations  
19 during the reorganization.

20 In short, the Third Circuit tells us that if unfit  
21 prepetition management when faced with a bankruptcy filing or  
22 a trustee motion in a bankruptcy case engages in a game of  
23 musical chairs and appoints shiny new current management that  
24 doesn't eviscerate or forward a trustee motion. Rather, it  
25 removes the presumption that the debtor-in-possession should

1 remain in control. What the statutory language is  
2 descriptive of is the code's expectation that longstanding  
3 competent and honest prepetition management is the only  
4 management who gets the benefit of operating during a  
5 reorganization.

6 THE COURT: Mr. McMahon, let me ask you a  
7 question.

8 MR. MCMAHON: Sure.

9 THE COURT: Is there any evidence that's been  
10 presented to me that Mr. Lyon and the other individuals who  
11 have been retained by Mr. Lyon to assist him in this case are  
12 anything other than independent of Cred or MoCredit?

13 MR. MCMAHON: Well we would argue, Your Honor,  
14 that the answer is they're not independent of Mr. Schatt and  
15 Mr. Hua. I can explain.

16 THE COURT: Is that going to be because they are  
17 still the equity owners and could remove them if they choose  
18 to do so?

19 MR. MCMAHON: Correct. And also the factual  
20 record is clear as to how the current corporate structure  
21 came about meaning, you know, debtor's counsel contacted Mr.  
22 Lyon who then contacted Mr. Schatt. Mr. Lyon was put into a  
23 position of authority.

24 THE COURT: I understand that, but that, in and of  
25 itself, doesn't indicate that he's not independent. I mean

1 there is no evidence that I have seen to indicate that Mr.  
2 Lyon is not anything other than completely independent of the  
3 debtors or anybody connected to the debtors.

4 MR. MCMAHON: And, Your Honor, that -- the facts  
5 are what they in so far as the record has been established.

6 THE COURT: So my question then becomes if Mr.  
7 Lyon is independent of the debtors and anybody connected to  
8 the debtors, including the insiders of the company, what  
9 would a Chapter 11 Trustee bring to the table that Mr. Lyon's  
10 doesn't?

11 MR. MCMAHON: Your Honor, again, I think we have  
12 to -- its -- I think we have to -- again, the record  
13 establishes that Mr. Lyon was put into place by Mr. Schatt.  
14 He is subject to being removed by a vote of Mr. Hua and Mr.  
15 Schatt. The debtors -- they are the two equity shareholders  
16 who are both targets of estate claims and causes of action  
17 based upon the record of this motion.

18 THE COURT: Well what if I was to include in --  
19 what if I was to include in an order that Mr. Lyon cannot be  
20 removed by either of the equity holders without an order of  
21 this court?

22 MR. MCMAHON: Well I think the issue is under 1104  
23 the court is actually obligated with the word "shall" to  
24 appoint a trustee in two circumstances where there is, you  
25 know, under (a)(1) where there is cause for doing so by

1 current management. Then second under the (b) section where  
2 it's in the interest of the estates and creditors to do so.

3 Your Honor, the record yesterday with respect to  
4 the prepetition activities associated with the debtor's  
5 estates. The fact that Mr. Schatt and Mr. Hua are in  
6 connection with the MoCredit related issues. I mean I can  
7 get right into the, I guess, discussion of the prepetition  
8 activities.

9 THE COURT: There is no doubt in my mind that  
10 there was shenanigans going on prepetition, that there was  
11 mismanagement of the debtors, but we don't have a situation  
12 where those people who are managing the company at that time  
13 are still in charge. The only issue is can Mr. Schatt or Mr.  
14 Hua remove Mr. Lyon as the independent director. And I am  
15 saying why can't I enter an order that simply says they can't  
16 do that without my permission --

17 MR. MCMAHON: Because --

18 THE COURT: -- instead of bringing in a whole  
19 other Chapter 11 Trustee who is going to have to start all  
20 over again.

21 MR. MCMAHON: Well there is a couple of points to  
22 be made there, Your Honor.

23 First, Section 1104(a) the language is mandatory.  
24 It just says "shall" meaning that --

25 THE COURT: If I find cause, but I don't know that

1 there is cause at this point because we have new management  
2 and nobody has shown me that there is any mismanagement going  
3 on post-petition.

4 MR. MCMAHON: Again, Your Honor, you have in  
5 addition to Section 1104(a)(1) and we would, I guess, contest  
6 the suggestion that this current management, whatever the  
7 professionals that have been inserted by Mr. Schatt and Mr.  
8 Hua, are independent of them. But beyond that under  
9 1104(a)(2), you know, there is also grounds where it's in the  
10 best interest of creditors meaning it's fairly clear that the  
11 situation is such where the circumstances would warrant the  
12 appointment of a trustee.

13 So, there is two basis there under Section 1104  
14 and the mere fact that, you know, the professionals would  
15 believe that, you know, they can sell the assets or whatever.  
16 What the Chapter 11 Trustee in response to Your Honor's  
17 question is going to do is going to add the independence  
18 factor completely removed from the situation that, you know,  
19 Mr. Lyon and the other professionals just do not have. And  
20 it's the only code based solution to a situation like the  
21 factual patterns that the court has been presented with.

22 THE COURT: Well, again, I don't think there is  
23 any evidence that Mr. Lyon and the other professionals are  
24 beholding to any of the insiders of this company. So the  
25 question is then you would go to 1104(a)(2) which is

1 discretionary if it's in the best interest of the creditors  
2 and how could it be in the best interest of the creditors if  
3 the only thing we're going to do is remove somebody who is  
4 currently independent of the owners of the company and the  
5 insiders of the company, and replace them with someone else  
6 who is also independent of the insiders and who would have to  
7 start over and delay the process.

8 MR. MCMAHON: Your Honor, first, we are like just  
9 a mere matter of days into these bankruptcy cases. So,  
10 therefore, I don't know if there is going to be like a real -  
11 - I don't believe there is going to be real delay to the  
12 process. Our office can interview candidates and insert one  
13 quickly in order to address the concern.

14 Beyond that, you know, with respect to the going  
15 forward, Your Honor, in light of the testimony you heard with  
16 respect to the prepetition shenanigans we're talking about  
17 claims and causes of action. And their claims and causes of  
18 action where Mr. Schatt and Mr. Hua are going to be targets  
19 with respect to them. And with respect to this process, Your  
20 Honor, again, the record is clear that Mr. Lyon was placed  
21 there by the insiders who would be the subject of those  
22 claims and causes of action in addition to their affiliated  
23 companies.

24 So, if there is anything that would be wrong in  
25 light of this record, Your Honor, it will be leaving Mr. Lyon

1 in as director and, frankly, it would be rudderless. The  
2 court under the bankruptcy code has a clear directive in  
3 circumstances like this where the insiders, basically, have  
4 conducted themselves in a way such that in order to ensure  
5 protection of the creditors the court has to step in and  
6 appoint a trustee.

7 So, it's basically from a standpoint of the way  
8 the code works Mr. Schatt and Mr. Hua put Mr. Lyon there.  
9 That is a positional conflict that in light of the record  
10 that was developed yesterday requires someone completely  
11 independent and removed from the process in order to move it  
12 forward.

13 Your Honor, we've heard some testimony about the  
14 sale process to a degree. Your Honor has also heard about,  
15 you know, I guess, some large numbers regarding claims and  
16 causes of action the \$40 million line of credit for MoCredit  
17 which is outstanding. So in terms of the value in the case  
18 it certainly looks like in the longer term the claims and  
19 causes of action case that needs someone independent,  
20 completely independent, from Mr. Schatt and Mr. Hua in order  
21 to move it forward. That is what is required by the record  
22 that was developed yesterday.

23 THE COURT: All right. Thank you, Mr. McMahon.

24 I'm going to move onto Mr. Sarachek.

25 MR. SARACHEK: Your Honor, I am going to try to



1 address what you're getting at. I do think that the  
2 professionals in the case have the best intentions, but if  
3 you're not going to -- and I echo Mr. McMahon's argument, but  
4 if you're not going to appoint a trustee in a case where  
5 after March of 2020 investor money was taken in a Ponzi like  
6 manner to pay the expenses of the company, if you're not  
7 going to appoint a trustee in a situation like this I'm not  
8 sure that there is any situation where a trustee can't be  
9 subverted by professionals.

10           What happened here, just too really address this  
11 at its core, is that Mr. Schatt was the brains of this  
12 operation and he only resigned because of the pressure that  
13 Mr. McMahon and my motion put on him. And he only resigned  
14 post-petition on December 7th and Mr. Podulka as well. Quite  
15 frankly, it's wrong that -- and that was post-petition. It's  
16 wrong for professionals to be able to subvert what Congress  
17 drafted which was a provision in the bankruptcy code that  
18 required the appointment of a Chapter 11 Trustee.

19           I understand the practical implications of all of  
20 this, I do. Nevertheless, and in our motion we did move for  
21 a Chapter 7 Trustee, but nevertheless the bankruptcy code  
22 requires the appointment of a trustee when you have post-  
23 petition management and really the person who is calling the  
24 shots he's the guy who signed the first day declaration. If  
25 you notice even though MACCO did submit a declaration first

1 day it was devoid -- it basically was devoid of any  
2 responsibility and any recognition of the inter-workings of  
3 the operations.

4 Your Honor, you have --

5 THE COURT: Let me ask you, Mr. Sarachek, I'm  
6 going back to the same thing. We now -- Mr. Schatt is now  
7 out. We have an independent director who is running the  
8 company. We have independent professionals who are engaging  
9 in a sale process. It's nothing different then what a  
10 Chapter 11 Trustee would do if I were to appoint one. I have  
11 no evidence before me that there is any post-petition  
12 misconduct by the debtors. I have no evidence before me that  
13 Mr. Lyon or any of the professionals that he has retained are  
14 anything other than completely independent.

15 So what is the cause that would allow me to  
16 appoint a Chapter 11 Trustee? Yes, there was prepetition  
17 misconduct, but that's prepetition and that is not relevant  
18 at this point because we have new management.

19 MR. SARACHEK: Your Honor, respectfully, you do  
20 have evidence that there was post-petition misconduct. The  
21 bottom line is with respect to UpgradeYa the 478 Bitcoin that  
22 they reported they had in collateral on the petition date is  
23 really only 160. And presumably the debtors and its  
24 professionals should know what collateral they have.  
25 Furthermore --

1 THE COURT: Well there is no evidence that that  
2 occurred post-petition. That is just the way it is now. So  
3 how did it go from 470 to 164? I don't know. There was no  
4 evidence introduced about that.

5 MR. SARACHEK: I believe it's in Mr. Inamullah's -  
6 - well, I believe it is -- Mr. Inamullah testified also with  
7 respect to the value of the supposed 14 million value that  
8 the debtor reported as their collateral, their specific  
9 Bitcoin, but that Bitcoin was virtually worthless.

10 THE COURT: Again that all occurred prepetition.

11 MR. SARACHEK: It was information that was filed,  
12 you know, in the first day. So that is post-petition. I do  
13 think that an independent trustee -- by the way, Your Honor,  
14 I want to call the court attentions to the fact that the  
15 largest creditors here don't sit on the creditor's committee.  
16 Mr. Silver and I represent the largest creditors here. And  
17 none of them sit on the creditor's committee.

18 The bottom line is you're hearing from the largest  
19 creditors that we would like the appointment of an  
20 independent trustee to investigate these causes of action.  
21 That is our position.

22 THE COURT: Thank you, Mr. Sarachek.

23 I'm going to move onto Mr. Pierce.

24 MR. PIERCE: Thank you, Your Honor. Matthew  
25 Landis with Landis, Rath & Cobb on behalf of UpgradeYa

1 Investments.

2           Your Honor, UpgradeYa joins in the conversion  
3 motion on a limited basis to support the conversion from  
4 these cases from Chapter 11 to Chapter 7. I acknowledge that  
5 converting these cases to Chapter 7 is a difficult decision  
6 for this court to make. It's also a very difficult decision  
7 for a creditor to support conversion to Chapter 7. Here  
8 UpgradeYa along with numerous other creditors have joined in  
9 that request.

10           Your Honor, quite simply, there's some cases that  
11 do not belong in Chapter 11 and this is one of them. The  
12 debtors and the committee assert that to the extent cause to  
13 convert existed those issues have been resolved and they  
14 resolved those through extraordinary steps to justify keeping  
15 these cases in Chapter 11.

16           To name a few of the steps that have been taken,  
17 the chief executive officer has been removed, the chief  
18 financial officer has been terminated, a chief restructuring  
19 officer has been installed, an interim chief financial  
20 officer has been appointed, and a professional from one of  
21 the proposed advisors to the debtors has been employee of  
22 that proposed professional has been installed and is acting  
23 as the debtor's controller. All of these steps have taken  
24 place after the petition date.

25           I don't think it's questioned that the debtors

1 entered the Chapter 11 with serious management and governance  
2 issues. Some of those governance issues and the authority to  
3 file these Chapter 11 cases on behalf of at least one of the  
4 debtors has not been resolved yet. The solution the debtors  
5 have presented and the committee is to strip the company on a  
6 post-petition basis to a non-operating shell and install  
7 Chapter 11 professionals as employees and officers of the  
8 company.

9 I don't say that as a knock on the professionals'  
10 qualifications. This is the highlight that Cred is not a  
11 debtor-in-possession with a legitimate going concern to  
12 operate and sell in a Chapter 11 process.

13 THE COURT: Well the evidence that I have from the  
14 witnesses, as Mr. Wu testified, they are in a sale process.  
15 They have already got people who are interested in buying the  
16 company on a going concern basis and is there any scenario in  
17 which the creditors of this company would do better if I were  
18 to convert this to a Chapter 7 and we liquidate the pieces  
19 rather than selling a going concern.

20 MR. PIERCE: Absolutely, Your Honor. Absolutely.  
21 What --

22 THE COURT: You're seriously telling me that in  
23 any circumstance a company that is liquidated in a Chapter 7  
24 is going to do better than a Chapter 11 being sold as a going  
25 concern?

1 MR. PIERCE: Well to be clear I say that because  
2 if you look at the proposed thirteen week cash-flow forecast,  
3 yes, there will be more assets available at the end of those  
4 thirteen weeks if we convert this to a Chapter 7. The  
5 debtors, what they propose and the evidence shows, is that by  
6 the time we get to March 5th there will be a net liquidity  
7 shortfall of \$700,000. That is after and it assumes that the  
8 debtors sell all of the cryptocurrency currently in their  
9 possession.

10 So what the debtors propose to this court as a go-  
11 forward plan here is that they will sell all of their  
12 cryptocurrency liquid assets, that they will deplete all cash  
13 on hand and that there will still be a liquidity shortfall of  
14 nearly \$700,000 and that is based on go-forward estimates  
15 that Mr. Bonjour testified and acknowledged could exceed what  
16 is in that forecast. That shortfall could be substantially  
17 greater.

18 It is also dependent on the price of Bitcoin or  
19 their other cryptocurrencies on any given day if the price of  
20 that cryptocurrency is --

21 THE COURT: Which is why the debtors want to sell  
22 this company as quickly as possible. If I convert this to a  
23 seven and have to have a Chapter 7 Trustee appointed you  
24 think this company is going to get sold quicker than it would  
25 be under the current circumstances?

1 MR. PIERCE: Well, Your Honor, if we look at the  
2 Chapter 13 budget the debtors are not proposing to sell any  
3 of their cryptocurrency. They are using their cryptocurrency  
4 to fund these cases and even doing that they still have a  
5 shortfall. They do not reach any scenario in which they can  
6 confirm a plan.

7 THE COURT: Well how is a Chapter 7 Trustee going  
8 to sell the cryptocurrency if it belongs to other people?

9 MR. PIERCE: Your Honor, that is a situation that  
10 would have to be, you know, decided in a different context.  
11 Even if we take out -- I think what Mr. Wu did not testify  
12 that the debtors are seeking to sell their cryptocurrency  
13 they're seeking to sell the platform.

14 THE COURT: Exactly. That is the Chapter 11 sale  
15 process to sell the platform with the employees who know how  
16 to run it as a going concern as opposed to liquidating it in  
17 which case now we're having fights over, well, is it  
18 someone's collateral, is it the debtor's Bitcoin, is it  
19 somebody else's Bitcoin. And it gets into a morass of how to  
20 deal with that situation. That seems more difficult to me  
21 than the current process proposed by the debtors.

22 MR. PIERCE: Your Honor, Mr. Wu testified that  
23 there is no difference in selling the platform by a Chapter 7  
24 Trustee or a Chapter 11. There is not something that a  
25 Chapter 7 Trustee can't do. It sounds to me that the process

1 and sale of the assets that they're proposing is intellectual  
2 property and there may be employees that go with the debtors  
3 for -- that go over to a potential purchaser or not.

4 We don't know, but what we do know is that the  
5 cash-flow shows under a scenario in which they sell all their  
6 cryptocurrency they can't get to a confirmable plan and they  
7 don't get to the liquidating trust or litigation trust that  
8 they propose under the plan support agreement. Then we end  
9 up in Chapter 7 and we end up in Chapter 7 on March 5th after  
10 over \$6.5 million have been paid to professionals.

11 THE COURT: All right. I understand your  
12 position. Let me move onto Mr. Silver because we have to  
13 finish this up.

14 MR. SILVER: Thank you, Your Honor. I'll be  
15 brief.

16 First, it's my client's position that Mr. Schatt  
17 is not out of the company. He's still actively involved and  
18 he's still being paid \$10,000 dollars a month presumably for  
19 something.

20 And we request that he be put out. He is not out.  
21 We have worked with debtors' counsel and counsel for the  
22 committee. So from our perspective that answers your question  
23 as to whether or not there's true independence. We don't  
24 believe so, because they kept Mr. Schatt. He's still there  
25 and he's being compensated.



1 And as --

2 THE COURT: Well, do you think a Chapter 11  
3 trustee wouldn't want to keep on Mr. Schatt because he's the  
4 one who knows where all this stuff is buried? I mean he has  
5 all the information -- how is a Chapter 11 trustee going to  
6 come in, in a vacuum and take this company over. He's going  
7 to have to have somebody there who has the history of it.

8 MR. SILVER: So, you're answering my own question  
9 I was about to state next.

10 The problem we have with the actual independence,  
11 the second part, is there's a \$100 million dollars missing  
12 from all these reports and analysis. And Mr. Bonjour made  
13 that point. They have not looked into -- and this is not a  
14 typical bankruptcy because of the crypto assets. So, there's  
15 a hundred million dollars and no one is jumping up and down  
16 on the table except for the actual creditors.

17 As Mr. Sarachek pointed out, the largest creditors  
18 are not on the committee. The largest creditors of which,  
19 again, my clients lost 3500 bitcoin and 12,000 each for a  
20 near total value of over \$90 million dollars right now. That  
21 money is missing and the people -- and this is, again, the  
22 unsecured creditors committee just came in last week. But  
23 for the last six weeks when you say don't you need Mr.  
24 Schatt? The answer is no.

25 The way this forensic analysis works is very

1 simply the transactional ideas just need to be analyzed and  
2 then you simply follow that. This is no different than if  
3 there were serial numbers involved. Mr. Schatt has been --  
4 alleged that Mr. Schatt is involved in some of this.

5           The insider trading between MoCredit and Cred, I  
6 mean our position is that Mr. Schatt still being in the  
7 company is and of itself a dispositive disqualification for  
8 true independence. And, therefore, we strongly support the  
9 trustee's motion to install a trustee because we believe true  
10 independence is needed.

11           It needs to be someone who is uniquely qualified  
12 to actually discover where the missing cryptocurrency is.  
13 That is publicly available information on the block chain.  
14 It's what sets apart cryptocurrencies from U.S. dollar fiat  
15 and we strongly encourage that be putting in the trustee for  
16 that reason.

17           THE COURT: Thank you, Mr. Silver.

18           Let me turn to the debtors. Who's going to do the  
19 closing, Mr. Grogan, Mr. Cousins?

20           MR. GROGAN: Yes, Your Honor. James Grogan from  
21 Paul Hastings on behalf of the debtors.

22           Your Honor, you've raised some of the points I  
23 would have raised, so I think I might be able to be shorter  
24 than ten minutes.

25           I think we need to just go back to the

1 (indiscernible) requirements here. So, let's start with the  
2 request to convert the case to a Chapter 7.

3 One of the requirements if you're looking at  
4 1112(b)(4)(a) is the absence of a reasonable likelihood of  
5 rehabilitation. We have a plan support agreement in place  
6 for a consensual plan supported by our committee.

7 I would also point out that that plan support  
8 agreement immediately grants consent from the debtor to the  
9 committee to control causes of action against the insiders  
10 which is another reason why Mr. Lyon is independent.

11 THE COURT: Hold on, Mr. Grogan. Hold on, Mr.  
12 Grogan, let me ask you a question.

13 So, we have a situation here according to the  
14 other creditors that I've heard from that say that the  
15 creditors on the creditors committee don't represent the  
16 majority of the holders of the bitcoin in this case. And  
17 they are all opposed to having Mr. Lyon continue in his  
18 position. They want a Chapter 11 trustee.

19 And isn't the, you know, an irreconcilable  
20 conflict between the committee or, excuse me, between  
21 creditors and the debtors; doesn't that provide a basis for  
22 appointing a Chapter 11 trustee?

23 MR. GROGAN: Well, I think that actually was not  
24 accurate. Mr. Sarachek's client, I don't even think we're on  
25 the top thirty list. I don't know where he's getting that

1 information that they're the largest creditors. They're not.

2           The members of the committee, and the committee  
3 can speak up on this as well. But I know that several of  
4 them were top ten on the top thirty list, so. I just don't  
5 think that's accurate. And there's no evidence to suggest  
6 that the committee is not representing the larger creditors.

7           Putting that aside, I mean we do have a path  
8 forward for a quick efficient Chapter 11 plan process which  
9 is confirmable within a short amount of time. There's also  
10 as the court has already noted no evidence of gross  
11 mismanagement of the estate. There just isn't.

12           The company is being well managed currently and  
13 so, there's just no statutory predicate here for conversion.

14           Second on the Chapter 11 Trustee cause that goes  
15 to current management. Again, Mr. Inamullah testified that  
16 he left the company November 6th. He has zero evidence of  
17 what's going on post-petition. There's no evidence that  
18 anybody has done anything wrong since the petition date.

19           We're not here to sprinkle holy water on what the  
20 debtors did prepetition. Nobody on my side thinks that this  
21 company was well run or, you know, as a model for business  
22 schools. But, you know, we are doing the right thing today.  
23 We will get this company sold quickly and we will confirm a  
24 plan before March.

25           So, there's just no cause here to displace Mr.

1 Lyon and Mr. Foster so that we -- and prevent them from  
2 running what will be the most effective successful outcome  
3 possible here for all of the unsecured creditors.

4 And with that, I'll turn it over to the committee.

5 THE COURT: Thank you. Let me hear from committee  
6 counsel.

7 MR. WALSH: Good morning, Your Honor. Tim Walsh  
8 from (indiscernible).

9 THE COURT: Mr. Walsh. I thought I hear Mr.  
10 Walsh. I don't --

11 MR. WALSH: That is correct.

12 THE COURT: I'm having a hard time hearing you.  
13 Can you get closer to your speaker or?

14 MR. WALSH: How is that, Your Honor?

15 THE COURT: That's better. Thank you.

16 MR. WALSH: So committee in this represents  
17 approximately 6500 unsecured creditors, Your Honor. And on  
18 the committee, I think we have the third, fourth, sixth and  
19 seventh largest holders as creditors.

20 And, Your Honor, you should know that this  
21 committee, and we're very lucky to have it, is a highly  
22 sophisticated committee. It's comprised of individuals with  
23 a deep understanding of cryptocurrency and block chain.  
24 Notably, about half of the committee members are law school  
25 trained.

1           And this committee has told me they have faith in  
2 the independence of both Mr. Lyons and Mr. Foster, so I think  
3 the court should be aware of.

4           We believe that it's the committee and not a  
5 Chapter 7 trustee or Chapter 11 trustee that's best suited to  
6 investigate these claims with the debtor. The committee has  
7 (indiscernible) expertise and the financial motivations to do  
8 so. And as Your Honor points out installing a new  
9 independent person at this stage of the case would only lead  
10 to another layer of administration which we don't think is  
11 warranted.

12           With respect to the U.S. Trustee's motion, Your  
13 Honor, I'm not really sure who they're fighting for. The  
14 committee made it pretty clear in its papers, we've executed  
15 a PSA. We see a way out of this case. We see a sale process  
16 that can be accomplished and we see a plan of liquidation  
17 that transfers all these claims to a trust that can be  
18 investigated and prosecuted by the committee. That's the way  
19 out.

20           The committee does not want a trustee. The  
21 committee wants this process to go forward. Again, I'm not  
22 sure who the U.S. Trustee is fighting for at this point  
23 because my constituents have made it clear, they do not  
24 (indiscernible) a trustee. They think it's a waste  
25 (indiscernible).

1 THE COURT: Mr. Walsh, you're kind of breaking up  
2 a little bit.

3 MR. WALSH: Your Honor, I think you've hit upon  
4 the other points with respect to what is in evidence and what  
5 is not, so I won't go through that.

6 But just for the record, the committee does not  
7 want a trustee appointed in this case and wants to go forward  
8 with the PSA.

9 THE COURT: Thank you, Mr. Walsh, I appreciate it.  
10 All right, we are at -- Mr. McMahon, very briefly.

11 MR. MCMAHON: Your Honor, I just want to note for  
12 the record that we also requested an examiner under 1104(c)  
13 provision which is mandatory because (indiscernible) that in  
14 this case. So, I just want to note that for the record.

15 THE COURT: All right, understood.

16 Here's what we're going to do. I have another  
17 hearing -- I have a meeting and then I have a hearing. My  
18 hearing is at one o'clock. I'm hoping it does not take more  
19 than an hour. So, I'm going to -- let's reconvene at three  
20 o'clock. I'll give you my ruling on these motions that are  
21 pending and we'll see how far we can get into the rest of the  
22 agenda, and we'll go from there.

23 So, let's -- we'll say we're standing in recess  
24 until 3:00 p.m. All right.

25 (A Chorus of "Thank you, Your Honor")

1 THE COURT: Thank you.

2 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

3 (Recess at 12:02 p.m.)

4 (Proceedings resumed at 3:05 p.m.)

5 THE OPERATOR: Recordings have begun and we are  
6 now live.

7 THE COURT: Thank you. Good afternoon, everyone.  
8 This is Judge Dorsey. We're back on the record in Cred,  
9 Inc., Case Number 20-12836.

10 Before we get back into the agenda, I'll go ahead  
11 and give you my ruling on the motions to convert the case to  
12 Chapter 7, appoint a Chapter 11 Trustee, and/or appoint an  
13 examiner.

14 Before converting a case to chapter -- a Chapter  
15 11 case to Chapter 7, the Court must first determine whether  
16 cause exists to do so under 1112, Subsection (b). "Cause" is  
17 defined as including a substantial or continuing loss to or  
18 diminution in the estate and the absence of a reasonable  
19 likelihood of rehabilitation. See Section 1121(b)(4).

20 The conduct leading to the decision to convert  
21 must be post-petition conduct. See In Re Sagecrest II, LLC,  
22 2010 WL 537246, at Page 3 (Bankr. D. Conn. 2010).

23 Here, I have no evidence before me that would show  
24 the debtors are incurring any substantial or continuing loss,  
25 and certainly none that relates to post-petition conduct.



1 Moreover, debtors did not present evidence -- excuse me.

2 Moreover, debtors did present evidence that they have a  
3 viable path forward to a potential confirmation of a plan of  
4 reorganization that can be accomplished in the very near  
5 term. Therefore, the conversion to Chapter 7 is not  
6 appropriate, and I will deny that relief.

7 Appointment of a Chapter 11 Trustee is governed by  
8 Section 1104 of the Code. 1104(a)(1) allows appointment for  
9 cause, including fraud, dishonesty, incompetence, or gross  
10 mismanagement of the affairs of the debtor by current  
11 management, either before or after commencement of the case.  
12 1104(a)(2) provides that appointment can be made, if it's in  
13 the best interests of the creditors, equity security holders,  
14 or other interests.

15 In this case -- in -- determining the existence of  
16 cause is made on a case-by-case basis at the discretion of  
17 the Court. See *In Re Sharon Steel*, 871 F.2d 1217, at 1226  
18 (3d. Cir. 1989).

19 Courts generally consider the following factors in  
20 determining whether to appoint a trustee:

21 One, the trustworthiness of the debtor.

22 Two, the debtor's past and present performance and  
23 prospects for the debtor's rehabilitation.

24 Three, confidence or lack thereof of the business  
25 community and the creditors in the present management.

1           And four, the benefits derived by the appointment  
2 of a trustee, balanced against the costs of that appointment.

3           See In Re Reserves Resorts Spa and Country Club,  
4 LLC, Case Number 12-13316, nineteen -- a 2013 decision by  
5 Judge Gross.

6           The evidence presented was that -- the evidence  
7 presented before me in this case raises serious questions  
8 about the conduct of the debtors' affairs pre-petition.  
9 However, the debtor has removed the pre-petition management  
10 of the company and replaced them with independent  
11 professionals, including an independent member of the board  
12 and the only board member, Mr. Lyons, having heard -- and  
13 appointed Mr. Lyons as the only board member.

14           Having heard the testimony of Mr. Lyons and the  
15 other professionals retained to run the debtors and market  
16 the company for sale, I am convinced of their independence.  
17 Although retained initially by prior management and equity  
18 holders, no evidence was established to question that they  
19 are, indeed, independent. Moreover, the Official Committee  
20 of Unsecured Creditors appointed in these cases have entered  
21 into a plan support agreement setting out a valid proposal  
22 for moving these cases forward.

23           Certain creditors and the U.S. Trustee, however,  
24 still express reservations about allowing these independent  
25 professionals to conduct the debtors' affairs, as they move

1 forward with a proposed plan. I disagree with those  
2 concerns.

3           However, I want to be perfectly clear that, if the  
4 two equity security holders take any actions to either  
5 replace Mr. Lyons as the independent director or try to  
6 dilute his control of the board by appointing additional  
7 members of the board without first seeking permission from  
8 the Court, I will immediately appoint a Chapter 11 Trustee.  
9 Therefore, for these reasons, I find that it would be  
10 inappropriate at this time to appoint a Chapter 11 Trustee.

11           As for the appointment of an examiner, this is a  
12 more difficult question. I disagree with the UST's position  
13 that the appointment of a -- of an examiner is mandatory.  
14 The language of -- the language of 1104(c) provides the Court  
15 with some discretion. The Court -- it says that the Court  
16 shall appoint an examiner to conduct such an investigation if  
17 the -- of the debtor as is appropriate. So the question  
18 becomes: Is it appropriate in this case?

19           The creditors' committee has taken the position  
20 that they are conducting an investigation, although I will  
21 note that they have just been appointed, and any  
22 investigation must be in its very early stages of this case.  
23 I'm also mindful of the fact that the -- some of the  
24 creditors of the company are distrustful of the situation and  
25 have concerns about the conduct of the previous management of

1 this company.

2           Therefore, I'm going to agree with Judge Glenn in  
3 In Re Residential Capital, LLC, 474 B.R. 112, 119-120  
4 (S.D.N.Y. 2012), in which he recognized that, quote:

5           "The only dispute as to whether the creditors'  
6 committee should be permitted to conduct an investigation  
7 without an examiner being appointment" --

8           The creditors' committee is ably represented in  
9 these cases and no party questions the creditors' committee's  
10 professionals' ability to competently and expeditiously  
11 complete an investigation. Nonetheless, Judge Glenn  
12 determined in that case that appointment of an examiner was  
13 appropriate, and I will do the same here. I think  
14 appointment of an examiner to conduct an investigation of the  
15 pre-petition conduct of the debtors is appropriate.

16           And therefore, I will enter an order requiring  
17 that that be done. The parties should confer and submit an  
18 appropriate form of order.

19           And in the form of order, I want to make clear, I  
20 do not want any duplication of effort. Since I'm appointing  
21 an examiner to conduct an investigation, there's no need for  
22 the creditors' committee to conduct a parallel investigation.  
23 So I would not approve any fees associated with the  
24 creditors' committee conducting that investigation.

25           Are there any questions?

1 (No verbal response)

2 THE COURT: All right. Let's move on to the rest  
3 of the agenda. What's next up, Mr. Cousins?

4 UNIDENTIFIED: Your Honor --

5 MR. COUSINS: Good afternoon, Your Honor --

6 THE COURT: Go ahead, Mr. Cousins.

7 UNIDENTIFIED: Your Honor --

8 THE COURT: I hear "Your Honor." Use the raise  
9 your hand, so I can know who's talking. I can't -- I've got  
10 a screen full of faces here, I don't know who's talking.  
11 Nobody. Okay.

12 Back to you, Mr. Cousins. Go ahead.

13 MR. COUSINS: Thank you, Your Honor. Good  
14 afternoon. Scott Cousins on behalf of the debtors.

15 I do have one update I wanted to inform the Court  
16 because I know we've taken up a lot of time. We've conferred  
17 with UpgradeYa about their motion, which is I think the  
18 second-to-last item on the agenda. They have agreed to  
19 adjourn their motion, the debtor doesn't object.

20 The next hearing we have is in connection with --  
21 excuse me -- the adversary that we filed against James  
22 Alexander and Alexander's motion to dismiss the case on  
23 January 6th. So, with the Court's permission, the debtors  
24 would be comfortable, along with UpgradeYa, to move that  
25 motion to January 6th.

1 THE COURT: Remind me what that motion is.

2 MR. COUSINS: That's the motion to reclaim  
3 collateral that they believe that is in the possession of the  
4 debtors. That's Mr. Pierce's client.

5 THE COURT: Okay. Yes, we can move that to the  
6 January 6th hearing.

7 MR. PIERCE: And Your Honor --

8 MR. COUSINS: (Indiscernible)

9 MR. PIERCE: -- I'd just like to confirm what Mr.  
10 Cousins was saying on behalf of UpgradeYa. And this is  
11 Matthew Pierce with Landis, Rath & Cobb for the record.

12 You know, given the late hour and the time that  
13 the Court has spent the last two days and the evidentiary  
14 issues that relate to our motion, we do not want to take any  
15 more of the Court's time and try to get that heard today just  
16 because of the time it will take. So we are agreeable with  
17 the debtors to adjourn that.

18 THE COURT: Okay. I appreciate that. Thank you,  
19 Mr. Pierce.

20 MR. COUSINS: Your Honor, for ministerial action,  
21 I think there may be some members of the debtors'  
22 professionals who were waiting around for that motion. I'm  
23 not sure if they need to stick around any further, but one or  
24 more might drop off with that adjourned.

25 THE COURT: That's fine. Anyone who does not need

1 to remain on the call may certainly drop off.

2 MR. COUSINS: Thank you, Your Honor.

3 There are several now uncontested matters at the  
4 beginning of the agenda. We certainly understand why the  
5 Court did not enter any proposed orders with respect to the  
6 motion to reject the headquarters, the insurance policies  
7 motion, the motion to -- the application to retain my firm,  
8 the procedures for interim comp, the ordinary course  
9 professionals and Donlin.

10 Your Honor, we've been working with the committee  
11 and the U.S. Trustee. We have produced blacklines, we've  
12 filed them and uploaded appropriate orders. And to my  
13 understanding, Your Honor, I don't think there's any  
14 objections to any of those, but I can certainly go through  
15 the blacklines and the changes that we made in response to  
16 the committee and (indiscernible)

17 THE COURT: No, I did review those that are under  
18 COC and CNO. I was waiting to see what happened with the  
19 motions to dismiss -- or the motion to appoint a trustee or  
20 convert. So I will go ahead and enter those orders for you.

21 MR. COUSINS: Thank you very much, Your Honor.

22 And I think that brings us to Agenda Item Number  
23 7, which is -- Mr. Bongartz from Paul Hastings is going to  
24 handle that.

25 THE COURT: All right. Mr. Bongartz?

1 MR. BONGARTZ: Yes. Good afternoon. This is Alex  
2 Bongartz of Paul Hastings.

3 So we're going to continue now with Agenda Item 7.  
4 And if it pleases the Court, we would like to consider Agenda  
5 Item 7 together with Agenda Item 12, which is the motion to  
6 seal, which is essentially covers the same ground that is  
7 left over from the motion on Agenda Item 7; i.e., the motion  
8 to approve the redaction or withholding of publication of  
9 certain personal identification information of the debtors'  
10 customers.

11 So we -- if the -- as Your Honor will recall --

12 THE COURT: Hold on one second --

13 MR. BONGARTZ: -- at the first day --

14 THE COURT: -- Mr. Bongartz. Hold on one second.

15 I think someone else has their line open, I'm  
16 getting feedback on the phone. If you're other than Mr.  
17 Bongartz, please mute your phone. Thank you.

18 Go ahead, Mr. Bongartz.

19 MR. BONGARTZ: Thank you.

20 As Your Honor will recall, you had granted the  
21 relief as it relates to the redaction of personal  
22 identification information on an interim basis at the first-  
23 day hearing, that was at Docket Number 34. And we are now  
24 requesting approval of that relief on a final basis.

25 I wanted to note that we had attached to our reply



1 -- which is filed at Docket Number 187 -- a declaration of  
2 Chris Wu of Teneo, and we would like to introduce that into  
3 evidence in support of the motion and both -- to be clear,  
4 both the motion to redact, as well as the motion to seal.  
5 And that was my first request, to introduce that into  
6 evidence.

7 THE COURT: Is there any objection?

8 MR. SCHANNE: We have a limited objection, Your  
9 Honor.

10 THE COURT: Who's speaking? Mr. Schanne?

11 MR. SCHANNE: Schanne.

12 THE COURT: Schanne.

13 MR. SCHANNE: May it please the Court, good  
14 afternoon. John Schanne, also on behalf of the Office of the  
15 United States Trustee.

16 Just a limited hearsay objection to the second  
17 sentence of the sixth paragraph of the Wu declaration. And  
18 that is Mr. Wu informing the Court of what potential buyers  
19 are informing Mr. Wu. If we want testimony of what the  
20 buyers are saying, they need to be here to say it.

21 THE COURT: Mr. Bongartz?

22 MR. BONGARTZ: Well, I think the Court can take  
23 notice of the fact that this is what the buyers have told Mr.  
24 Wu, whether the buyer --

25 THE COURT: How can I do that? I can't do that,

1 take notice of it. I mean, they've either told him or they  
2 haven't. And if he's the one telling me they told him, it's  
3 hearsay.

4 MR. GROGAN: Your Honor, James Grogan. May I be  
5 heard for just one second on this?

6 THE COURT: Quickly.

7 MR. GROGAN: Your Honor, Mr. Wu, I think, is an  
8 expert, he's been our retained as our -- or is proposed to be  
9 retained as our investment banker, and an expert can rely on  
10 hearsay.

11 THE COURT: Well, he's not testifying as an expert  
12 on this motion, so I'm going to sustain the objection.

13 MR. GROGAN: Okay.

14 MR. SCHANNE: Thank you, Your Honor.

15 (Redacted Wu Declaration received in evidence)

16 MR. BONGARTZ: All right. As to the merits of the  
17 motion, I think we've laid our arguments out in our reply,  
18 but I'm just going to recap them briefly.

19 As Mr. Wu's declaration substantiates, the  
20 customer list has value here, but it only has value as long  
21 as it's not disclosed. In fact, Mr. Wu's declaration -- as  
22 for his declaration, he is attempting to sell the business as  
23 a going concern, which includes the customer list. And to  
24 release or reveal the names on that list would materially  
25 diminish the value of that list.

1           Now he also testified that -- or sorry, he didn't  
2 testify. In his declaration, he declared that the -- he is  
3 marketing the customer lists. I'm not going to mention what  
4 the buyer said in response, but he -- it's definitely part of  
5 the assets, the key assets that are being marketed for sale.  
6 And in his opinion, the -- if that information were to be  
7 disclosed, it would materially diminish its value.

8           I would also note that one of the key features of  
9 cryptocurrency -- as is not just evidenced by Mr. Wu's  
10 declaration, but it's now been repeated on multiple occasions  
11 -- is that the holders of such currency, they are generally  
12 anonymous. It's certainly possible that a cryptocurrency  
13 holder can raise his hand, as has happened even in this case,  
14 and identify himself. But without the customer doing so  
15 voluntarily, it is generally not in the public domain who  
16 holds cryptocurrency. And to be clear, this is not just  
17 limited to individuals; it is also the case for corporate  
18 entities. And I believe one evidence is -- in support of  
19 that is -- we'll get to that, and the committee has  
20 evidentiary support in that regard.

21           So, with that in mind, we would like to reiterate  
22 our request, as we've done at the first-day hearing, that the  
23 Court keep the customer names, as well as addresses,  
24 confidential; that the debtors be permitted to redact  
25 customer names and address information both from schedules,

1 as well as the creditors' list, and as well as -- and that  
2 the claims agent be permitted to redact name and address  
3 information from claims filed by customers. That would --  
4 that's it.

5 THE COURT: All right.

6 MR. BONGARTZ: And I understand that the committee  
7 -- committee's counsel would like to be heard on this, as  
8 well.

9 THE COURT: All right. Let me hear from the  
10 committee's counsel, and then I'll go to the trustee.

11 MR. AZMAN: Hi, Your Honor. Good afternoon.  
12 Darren Azman, McDermott, Will & Emery, counsel -- proposed  
13 counsel to the committee.

14 Before I begin, we do have two declarations that  
15 we submitted with our joinder, one from Mr. Segall, and the  
16 second from Mr. Friedler. And so I'd ask the Court to move  
17 both of those into evidence. Both Mr. Segall and Mr.  
18 Friedler are on the line and available for cross.

19 THE COURT: Is there any objection?

20 (No verbal response)

21 THE COURT: Okay. They're admitted without  
22 objection.

23 (Segall Declaration received in evidence)

24 (Friedler Declaration received in evidence)

25 MR. AZMAN: Thank you, Your Honor.

1           Your Honor, the sealing motion is of significant  
2 importance to the committee, as I'm sure came through on our  
3 joinder and the declarations. This is not as simple as  
4 creditors just wanting to remain anonymous, it's much more  
5 than that.

6           The cryptocurrency space is one that is ripe with  
7 fraud. Of course, there's fraud everywhere today, but the  
8 risk is far more acute for holders of cryptocurrency. And I  
9 think there are really three reasons for that, all of which  
10 were laid out in Mr. Friedler's declaration.

11           The first is that cryptocurrency assets are ideal  
12 targets for theft because it's incredibly difficult to trace  
13 and can be easily liquidated.

14           Second is that cryptocurrency is decentralized.  
15 There is no bank. There are few, if any, procedural  
16 safeguards that are in place to stop or unwind a fraudulent  
17 transaction if it occurs. It's not like a credit card  
18 purchase, Your Honor, or a wire transfer, where, if a bank  
19 suspects fraud, you're going to get a notification on your  
20 phone. Once the crypto is gone, it's gone.

21           And then third, Your Honor, for those two reasons,  
22 the debtors' customers in these cases are essentially what we  
23 would call "pre-qualified," in terms of being target victims  
24 because they naturally hold cryptocurrency.

25           There is a -- I'll be clear, Your Honor. There is

1 a small (indiscernible) in the case, probably around two  
2 percent of the unsecured creditor pool, in terms of dollars,  
3 who -- you know, for example, the convertible noteholders,  
4 who probably don't fall into that bucket. And quite frankly,  
5 I don't think we have any objection to those names being made  
6 public. We're speaking only about the debtors' customers who  
7 are customers are of the debtors, who naturally have held and  
8 probably continue to hold cryptocurrency.

9           Your Honor, the second declaration that we  
10 submitted is from Mr. Segall, who is a representative for one  
11 of the committee members, Maple Partners. The individuals  
12 who formed Maple were so concerned about the risks that I  
13 just outlined shortly after the bankruptcy filing -- and to  
14 be clear, before the committee's appointment, but shortly  
15 after the bankruptcy filing -- that they formed a new LLC to  
16 hold their crypto, so that, if they were appointed to the  
17 committee, and maybe for other reasons, but if their -- they  
18 did not want their names to be disclosed.

19           I'm sure there are others out there who have done  
20 that, but I'm sure that also a majority of the debtors' 6,500  
21 creditors likely don't have the means to do that. And I  
22 think it's also noteworthy that a significant portion of the  
23 debtors' customers don't even speak English, they're all over  
24 the world. So they have no idea that their names may be  
25 publicized in these cases.

1           Now, Your Honor, these concerns are not only  
2 coming directly from our committee members, but the unsecured  
3 creditor body at large, who have been very vocal about many  
4 aspects of this case online in various forums. They are  
5 scared, not just because they've lost a lot of money, but now  
6 because their names may be made public.

7           Your Honor, that's all I have. I don't want to  
8 repeat the rest of the argument from our joinder. But I  
9 think that the declarations and the argument warrant  
10 withholding that information. Thank you.

11           THE COURT: All right. Thank you.

12           Mr. Schanne, before I come back to you, I see Mr.  
13 Murley has raised his hand. Do you want to be heard, Mr.  
14 Murley?

15           MR. MURLEY: Thank you, Your Honor. Luke Murley  
16 of Saul, Ewing, Arnstein & Lehr, on behalf of Maple Partners.  
17 We are the committee member Mr. Azman referred to. We join  
18 the debtors' motion and the committee's joinder for the  
19 reasons stated, and those pleadings and Mr. Azman's  
20 presentation. Thank you, Your Honor.

21           THE COURT: All right. Thank you.

22           Mr. Schanne.

23           MR. SCHANNE: Thank you, Your Honor. Again, may  
24 it please the Court, John Schanne on behalf of the Office of  
25 the United States Trustee.

1           Your Honor, the debtors seek authorization to  
2 redact the names and all associated information identifying  
3 all the debtors' creditors. Bankruptcy process is founded on  
4 principles of transparency and disclosure, limited  
5 exceptions, and it's the debtors' burden to meet those  
6 exceptions.

7           107(b)(1) permits the Court to protect trade  
8 secrets and confidential information. The debtors here  
9 assert that the creditor list is potentially a value in  
10 marketing the company. That's no doubt accurate for many  
11 businesses engaged in a 363 sale, I don't think that's  
12 unique. Notably, there's no evidence from any buyer  
13 ascribing any value to that list, there's no stalking horse  
14 agreement. Should the agreement here, as postured, be  
15 sufficient to satisfy (b)(1), we'll have an exception that  
16 swallows the rule.

17           I think the real concern, though -- and you heard  
18 it in the committee's presentation -- is privacy. I think  
19 that's the real focus here, is that people are concerned  
20 about their information getting out. And 107(c)(1) allows  
21 the Bankruptcy Court to protect individuals. (c)(1)  
22 incorporates 1028(d) of Title 18, which, again, protects  
23 individuals. The plain language of neither of them apply to  
24 protect entities.

25           So what are we talking about here? We're talking



1 about individuals. And with respect to those individuals, we  
2 are sensitive to the concerns. We understand. The  
3 Bankruptcy Rules, the local rules, they require complete  
4 disclosure. The debtors, the committee, they've offered  
5 evidence that, if you identify all of that information, there  
6 are real concerns there. We're not asking for that. We're  
7 asking just for submission of the creditor names. We have  
8 not opposed redaction with respect to individuals of any  
9 other identifying information, just the names. The Friedler  
10 declaration itself admits that just the names may not be  
11 sufficient with respect to common names, right?

12           So we have here a hypothesis in evidence that, if  
13 all of this information is provided, these bad things may  
14 happen. And we're sensitive to that and we understand that  
15 and, in fact, you know, we don't oppose that. It's just the  
16 names of individuals who are looking to be disclosed. And  
17 with respect to entities, I don't believe (c)(1) applies.

18           We saw, during the trustee appointment motion  
19 earlier today, disagreement between the committee and Mr.  
20 Sarachek about where his creditors fall in the top 30 list.  
21 Normally, that would have been easily resolved by looking on  
22 the docket and seeing where they fall. Of course, that  
23 information is not available here.

24           So debtors assert that the UST has not  
25 demonstrated why this information should be public, but that

1 flips the burden. They have to demonstrate why the exception  
2 applies here, to where even just the names themselves of  
3 individuals cannot be disclosed.

4           So, for that reason, we respectfully request that  
5 the motion be denied in its entirety with respect to  
6 entities, and granted, for the most part, with respect to  
7 individuals that just allow the names to be disclosed. Thank  
8 you, Your Honor.

9           THE COURT: All right. Thank you.

10           Mr. Bongartz, any reply?

11           MR. BONGARTZ: Yes. Thank you, Your Honor.

12           I wanted to just make two quick points. This is  
13 not comparable to a customer list of a, you know, run-of-the-  
14 mill business. I mean, the customer information, because of  
15 the anonymity intrinsic in holding Bitcoin, is costly to  
16 build. It's costly and expensive to develop a customer  
17 database because you don't know who out there holds the  
18 cryptocurrency. So that's what makes it an attractive asset  
19 or may make it an attractive asset for a potential buyer.

20           The second point I wanted to make is the issue  
21 with names is that it's just happenstance. If you have a  
22 common name, then maybe you're protected; and if you don't  
23 have a common name, you're not. That -- I think we should  
24 apply a process that is fair to everyone. And to just have  
25 it by sheer luck that you have a common name and, you know,

1 then you're protected is not in the interest of protecting  
2 customers, generally. Thank you, Your Honor.

3 THE COURT: Okay. Has the list of names been  
4 disclosed to the trustee?

5 MR. BONGARTZ: I believe that it has.

6 THE COURT: Do you have all of the information  
7 about the holders of the Bitcoin, Mr. Schanne?

8 MR. SCHANNE: Your Honor, we have been provided  
9 the top 30 lists. The schedules and statements have not been  
10 prepared, so we do not have that information yet.

11 THE COURT: All right. And is there -- I -- it's  
12 been a while since I took a look at this proposed order. Is  
13 there anything in this proposed order that provides a  
14 mechanism that, if someone can come forward and have a  
15 legitimate reason why they need to have access to that list,  
16 they can seek to get it?

17 MR. BONGARTZ: Yeah, that mechanism was in the  
18 interim order and we've carried it over into the proposed  
19 final order.

20 THE COURT: Okay. All right. Then, based on the  
21 evidence, I think there is at least some credible argument  
22 that the creditor list -- which his, also, in this case, the  
23 customer list of the -- of the debtors is -- has some  
24 intrinsic value, and that disclosure of that list could  
25 affect the ability of the debtors to market and sell that

1 list as a part of their going toward a plan of reorganization  
2 here.

3           So I will overrule the objection, so long as the  
4 U.S. Trustee is provided with all of the information  
5 regarding every single one of the Bitcoin holders, and that  
6 there is a mechanism in the final order that allows for  
7 someone who can come forward and seek to obtain that list for  
8 a legitimate purpose can do so.

9           I think the goal here is to keep this out of the  
10 hands of competitors. And so I would expect that, obviously,  
11 someone -- or the competitor of the debtor and came forward  
12 and said, well, we want to see the list, you're not going to  
13 give it to them. But there may be others who have a  
14 legitimate reason for why they need that information. And so  
15 I want to make sure there's a way for someone who has a  
16 legitimate reason to get it, can get it.

17           MR. BONGARTZ: Yes, understood, Your Honor. And  
18 just to pinpoint the relevant paragraph, it's Paragraph 3 of  
19 the proposed order. But we'll be submitting that --

20           THE COURT: All right.

21           MR. BONGARTZ: -- after the hearing.

22           THE COURT: Okay. Yeah, please confer with the  
23 U.S. Trustee and come up with an order that you can submit  
24 under COC.

25           MR. AZMAN: Thank you, Your Honor.

1 MR. BONGARTZ: Thank you.

2 THE COURT: Thank you.

3 MR. BONGARTZ: Okay. Moving on, the next item is  
4 Item 8 on the agenda. That is the cash management motion;  
5 i.e., the motion to authorize the debtor to continue to  
6 operate their cash management system, among other things.  
7 That was Docket Number 7. Your Honor had granted the cash  
8 management order on an interim basis on November 10th.

9 We -- I am aware of two limited objections. One  
10 was filed by Jaime Schiller and other customers. I believe  
11 that that objection is moot, as a result of Your Honor's  
12 ruling earlier this afternoon. They had sought an  
13 adjournment of a decision until after Your Honor had ruled on  
14 the trustee motion. But I don't -- again, in light of your  
15 ruling, I don't think that objection has any -- you know,  
16 it's still alive.

17 The other limited objection was filed by the U.S.  
18 Trustee. I should note that we did incorporate a series of  
19 comments, informal comments, that the U.S. Trustee provided  
20 to us, and we have attached a blackline to our reply at  
21 Docket Number 215. And if Your Honor would like, I can walk  
22 you through those changes. But my understanding is that  
23 these changes are acceptable to the U.S. Trustee, and I don't  
24 know if he has any further issues outstanding, but I believe  
25 that we're in agreement on the form of order.

1 THE COURT: Okay. Mister --

2 MR. BONGARTZ: And the only issue with the U.S.  
3 Trustee that is remaining is whether Section 345(b) requires  
4 the debtor here to essentially sell all their cryptocurrency.  
5 On that point, I should -- I would like to make a few  
6 comments.

7 The first one is -- and we've mentioned this in  
8 our reply -- is that we do not believe that cryptocurrency  
9 constitutes, quote, "estate money" for purposes of Section  
10 345, so we don't believe it applies. Cryptocurrency has been  
11 held by other courts to be a commodity, not money, it's not  
12 legal tender, it's not accepted as currency by the  
13 Government; and so, therefore, we don't believe that 345(b)  
14 applies. But in any event, even if it does, we believe that,  
15 in this instance, a waiver should be granted.

16 This is a -- cryptocurrency is the lifeblood of  
17 this company. It's comparable to the oil or other commodity  
18 -- or commodities businesses. And to require the debtors to  
19 sell out -- sell down all its cryptocurrency would  
20 essentially deprive it of one of its key assets.

21 I should also note that, in addition, as a result  
22 of the plan support agreement that the debtors have entered  
23 into with the committee, the committee has oversight over the  
24 debtors' cryptocurrency positions. The debtors have agreed t  
25 provide weekly reporting. And the committee has consent

1 rights if the debtors wanted to sell cryptocurrency beyond  
2 what is permitted under the budget. And in light of all of  
3 the foregoing, we request that the Court approve the proposed  
4 waiver of Section 345(b), which is in Paragraph 10 of our  
5 proposed form of order. Thank you.

6 THE COURT: Mr. Schanne, are your objections all  
7 resolved?

8 MR. MCMAHON: Your Honor, if I may, Mr. McMahon  
9 again.

10 THE COURT: Oh, go ahead, Mr. McMahon.

11 MR. MCMAHON: Your Honor, good afternoon. With  
12 respect to the cash management order, just one note.  
13 Debtors' counsel I don't think characterized our position  
14 correctly. Because of the presence of the cryptocurrency in  
15 e-wallets, which the debtors are holding, the motion turns  
16 out to be a hybrid Section 345/363 motion.

17 There's risk with maintaining the position in  
18 cryptocurrency. With the understanding now that the  
19 committee has been appointed since the last order was entered  
20 and they are not objecting to holding the crypto, as the case  
21 may be, we are okay with the revised proposed form of order  
22 and we're not maintaining an objection to the motion going  
23 forward.

24 THE COURT: Okay. Thank you, Mr. McMahon.

25 Anyone else wish to be heard?

1 MR. AZMAN: Your Honor, it's Darren Azman again,  
2 from McDermott, proposed counsel to the committee.

3 The only thing I'd add is this is an issue that we  
4 are very much focused on, as Mr. Bongartz mentioned. It's a  
5 line item in the PSA and it's something that we're going to  
6 be looking at even more closely over the next few days and  
7 coming weeks, to determine whether there's sufficient  
8 liquidity and what needs to be done with the crypto, but  
9 there is no decision that's been made yet.

10 THE COURT: Okay. Thank you.

11 Anyone else?

12 MR. SILVER: Your Honor, it's David Silver of  
13 Silver Miller, representing Jaime Schiller.

14 As stated previously, just for the record, our  
15 limited objection is mooted by the earlier decision, and we  
16 withdraw it.

17 THE COURT: Okay. Thank you.

18 All right. Then, based on the record presented,  
19 I'm satisfied the relief requested is appropriate, including  
20 the waiver of Section 345(b) in the order, and I will enter  
21 that order.

22 MR. BONGARTZ: Thank you, Your Honor.

23 Moving on to the next item on the agenda, that is  
24 the employee wage motion, which is filed -- sorry, I  
25 (indiscernible) -- Docket Number 11. Again, Your Honor will



1 recall that you had granted that motion on an interim basis  
2 at the November 10 first-day hearing.

3 We, again, have a limited objection by Jaime  
4 Schiller and other customers. And for the same reasons I've  
5 stated earlier, I believe that that objection is mooted by  
6 Your Honor's earlier ruling.

7 We have also received a number of informal  
8 comments from the U.S. Trustee, which I believe we have  
9 incorporated, although I don't know for certain whether the  
10 U.S. Trustee is signed off on the form of order. So I'd be  
11 happy to walk Your Honor through the proposed order.

12 There's actually one point I wanted to make --  
13 sorry, I just saw it in my notes -- and one change that we do  
14 need to make in the form of order that was submitted. And I  
15 don't know -- I don't know if Your Honor has a copy of that  
16 handy. It was attached -- it was -- sorry. It was filed at  
17 Docket Number 214. And this is in Paragraph 4 of that  
18 proposed order, this was a -- this is a glitch that crept in  
19 because we were trying to incorporate both comments we've  
20 received from the committee, as well as comments we've  
21 received from the U.S. Trustee.

22 I just wanted to make absolutely clear -- and  
23 we'll reflect that in the draft -- in the form we'll submit  
24 to chambers -- is that, if the debtors want to make any bonus  
25 or incentive payments to non-insiders, or want to make bonus,

1 incentive, or severance payments to insiders, they will have  
2 to come -- or we will have to come back and obtain an order  
3 from this Court, and we'll have to do so on notice to  
4 parties-in-interest. I wanted to make absolutely clear we're  
5 not going to move forward with that solely with the consent  
6 of the committee. We will come back to Your Honor, and we  
7 will, if the chooses to make any such -- make any such  
8 payments, we'll come back and seek entry of an order.

9 And obviously --

10 THE COURT: Okay.

11 MR. BONGARTZ: -- that is what we had agreed to  
12 with the U.S. Trustee. And I just wanted to make clear that  
13 that is still the agreement and that will be reflected in the  
14 form of order.

15 THE COURT: Okay. Thank you.

16 Mr. McMahon, are your issues resolved?

17 MR. MCMAHON: They are, Your Honor. No further  
18 comments.

19 THE COURT: Okay. Thank you.

20 Anybody else wish to be heard?

21 (No verbal response)

22 THE COURT: All right. I'm satisfied, based on  
23 the record, that the requested relief is appropriate.  
24 Subject to submitting the final form of order under  
25 certification of counsel, we'll get that order entered.

1 MR. BONGARTZ: Thank you, Your Honor.

2 So the next item on the agenda is the bar date  
3 motion. With Your Honor's permission, I would actually  
4 propose that we go slightly out of order because it -- I  
5 think it logically makes more sense to first consider the  
6 motion to extend time to file schedules, and then we can look  
7 at the bar date motion, which sort of -- which flows from  
8 that. So I would, with Your Honor's permission, jump to Item  
9 17 on the agenda.

10 THE COURT: That's fine.

11 MR. BONGARTZ: Okay. Thank you.

12 So I know that there has been a little bit of a --  
13 you know, that there's been two motions filed, an original  
14 motion and an amended motion, and then we filed a revised  
15 proposed order. This was primarily the result of learning  
16 what the situation on the ground is and getting new  
17 management in place. We had initially anticipated that the  
18 schedules would be completed by December, late December.

19 But in light of having to replace -- or having to  
20 replace management, including putting in a new CRO, replacing  
21 the CFO, and the controller going on maternity leave, and in  
22 light of the vast amount of information -- as Your Honor will  
23 recall, there are more than 6,000 customers -- that December  
24 deadline or -- that we had initially proposed was no longer  
25 feasible.

1           We had then filed an amended motion, asking to  
2 push that deadline to January 22nd. And then, after  
3 discussions with the committee and after further, you know,  
4 analysis of what needed to be done in order to complete the  
5 schedules, we're comfortable with only asking for an  
6 extension to January 7th. So that cuts it back by 15 days  
7 from what we had proposed in our amended motion. That -- so  
8 that's our current request.

9           I should also note that that date is consistent  
10 with the deadline or the milestones set forth in the plan  
11 support agreement with the committee, and I understand that  
12 the committee supports the extension to -- the extension of  
13 the deadline to January 7th. Thank you.

14           THE COURT: Thank you.

15           Is there anyone else who wishes to be heard? Mr.  
16 McMahon?

17           MR. MCMAHON: Your Honor, again, good afternoon.  
18 Very quickly.

19           Initially, this motion was going to be tabled  
20 because, in the normal scheme of things, Your Honor, bar date  
21 motions don't go out until the debtors complete this task.  
22 So, in light of the revised, I guess, proposal with the  
23 committee for January 7th, our office is not objecting to  
24 that date now, in light of the, you know, two-week concession  
25 over what was originally proposed.

1 But I was expecting the bar date motion to be  
2 continued. I would like to be heard on that item, Your  
3 Honor, when we get to it momentarily.

4 THE COURT: Okay.

5 MR. MCMAHON: But no objection --

6 THE COURT: No objection on the motion to extend  
7 the date to file schedules, though, right?

8 MR. MCMAHON: Correct.

9 THE COURT: Okay. Thank you.

10 Anyone else?

11 (No verbal response)

12 THE COURT: All right. I'm satisfied that relief  
13 is appropriate. I will grant that order.

14 MR. BONGARTZ: Thank you, Your Honor.

15 And now we -- I'm going to turn to the bar date  
16 motion, which was at -- it's filed at -- it's on -- sorry --  
17 it's Agenda Item 10.

18 So we are requesting that the general bar date be  
19 set for February 10th. That date is driven, in large part,  
20 by the milestones under the plan support agreement. We need  
21 to have a bar date before solicitation can begin. And it is  
22 crit -- absolutely critical in this case, given the limited  
23 resources available, that these cases move forward as  
24 expeditiously as possible.

25 We submit that a period of 30 days, plus or minus,

1 between the date on which the schedules will be filed -- and  
2 they may actually get filed sooner than January 7th, but  
3 that's the outside date -- and the proposed bar date of  
4 February 10 is appropriate under the circumstances.

5 But I'm -- I should also note that the committee  
6 supports the bar date of February 10, and I don't -- I  
7 understand the U.S. Trustee has a -- objects to the motion  
8 going forward, but I'll let him present that argument.

9 THE COURT: Okay. Mr. McMahon?

10 MR. MCMAHON: Very quickly, Your Honor.

11 The way things typically work in a case that  
12 appears before this Court is schedules are filed, creditors  
13 get to see how their claims are scheduled -- you know,  
14 whether they're contingent, unliquidated, or disputed -- such  
15 that, when the proof of claim bar date does come, perhaps  
16 they don't have to file a proof of claim if they agree with  
17 what's scheduled.

18 Second, Your Honor, it also gives the parties-in-  
19 interest an opportunity to pressure-check the schedules.  
20 There is a potential for abuse -- and I'm not suggesting that  
21 it's going to occur here. But sometimes, you'll have  
22 situations where, you know, every creditor is marked  
23 contingent, unliquidated, or disputed, and the debtors don't  
24 do their diligence with respect to accurately preparing the  
25 schedules.

1           What I've said to debtors' counsel is a couple of  
2 things:

3           First, I'm prepared to act within 48 hours of the  
4 January 7th schedules deadline to take a look at them and to  
5 advise them whether or not we have any issues with respect to  
6 what's been assembled. If there are, we can contact the  
7 Court and perhaps have a teleconference. If we don't have  
8 issues, Your Honor, then the bar date notice can go out  
9 immediately on the heels of our making that determination.

10           So, you know, I'm going by the way, you know,  
11 things are typically done. And they things are typically  
12 done do not involve the bar date notice going out in advance  
13 of the schedules being filed.

14           MR. AZMAN: Your Honor, may the committee be heard  
15 briefly?

16           THE COURT: Go ahead.

17           MR. AZMAN: Darren Azman again for the committee.

18           What Mr. McMahon proposes would effectively extend  
19 the life of these Chapter 11 cases by three to four weeks, so  
20 that's another month of professional fees and U.S. Trustee  
21 quarterly operating fees.

22           I hear Mr. McMahon that, in many cases -- maybe  
23 most -- that's not the -- necessarily the exact order things  
24 go in. But there's nothing in the Bankruptcy Rules or the  
25 Bankruptcy Code that prevents it, on the one hand. And

1 moreover, creditors are going to have an opportunity to see  
2 the schedules. January 7th is when the schedules will be  
3 filed; the bar date will be a month later. We're just  
4 talking about the notice of the bar date going out now, so  
5 that we can expedite these cases.

6 And so I don't really follow Mr. McMahon's logic.  
7 They will see the bar date notice. And if they want to file  
8 a proof of claim before the schedules are filed, that's up to  
9 creditors. Alternatively, they can wait until they see them  
10 on January 7th. Thank you.

11 THE COURT: Mr. Bongartz, does the bar date notice  
12 that you're proposing to send out indicate that the schedules  
13 will be filed no later than January 7th?

14 MR. BONGARTZ: I believe it does. But if it  
15 doesn't, we will make sure to add it.

16 THE COURT: Okay.

17 MR. BONGARTZ: When -- I think --

18 THE COURT: Yeah.

19 MR. BONGARTZ: -- there is a provision in there  
20 that the schedules have been filed. But I will absolutely  
21 make clear that the January 7th deadline is mentioned.

22 THE COURT: All right. Well, I think, if we send  
23 out the bar date notice with a date of -- I've lost my notes  
24 here -- of February 10th for the bar date, and we've sent out  
25 a notice that says a schedule will be filed by January 7th,



1 and you don't have to file your proof of claim until after  
2 the schedules are filed, that should take care of the  
3 situation. Does that resolve your issue, Mr. McMahon?

4 MR. MCMAHON: Yeah, I --

5 MR. BONGARTZ: Your Honor, I think --

6 MR. MCMAHON: Your Honor --

7 MR. BONGARTZ: -- I've actually -- I should note  
8 one more thing. I believe that the way we've set this up is  
9 that the notice goes out -- there will be a customized proof  
10 of claim form, which will include the scheduled amounts on  
11 the front page. So what will go out to the customers will  
12 inform them directly, on the proof of claim form that they  
13 would -- can submit themselves, what the scheduled amount of  
14 the claim is.

15 THE COURT: Well, how are you going to do that  
16 before the schedules are filed?

17 (Participants speak simultaneously)

18 THE COURT: Hold on. One at a time. Mr.  
19 Bongartz?

20 MR. BONGARTZ: The way this works -- and I  
21 apologize for -- if I misspoke earlier -- the notice will go  
22 out after the schedules have been filed.

23 THE COURT: So notice will go out on what, what  
24 day are you proposing?

25 MR. BONGARTZ: I think we will do this within five

1 business days after the schedules have been filed. I think  
2 there's a -- yeah, five business days.

3 THE COURT: That puts you at January 14th. And  
4 the bar date is what?

5 MR. BONGARTZ: February 10th.

6 THE COURT: That's almost four weeks, Mr. McMahon.

7 MR. AZMAN: Your Honor, may the committee be heard  
8 briefly? Because this is not consistent with -- I think this  
9 is a mistake, and the committee would not support that. Our  
10 understanding, as is laid out in the -- there is no way to  
11 comply with the PSA time line if that is when the bar date  
12 notice is going to go out.

13 THE COURT: All right. So I --

14 MR. AZMAN: I mean, there's -- I guess. Sorry.  
15 I'm sorry. Technically, you can still comply with the time  
16 line. But the committee is concerned, there are a lot of  
17 international creditors in this case who will probably need  
18 more time than three to four weeks to get a proof of claim  
19 in. And we had asked the committee to push back the bar date  
20 to February 10th for that purpose.

21 And so, effectively, if we're now saying the bar  
22 date notices are going to go out right after the schedules  
23 are filed, on or around January 7th, we basically -- we don't  
24 have what we negotiated for. And I apologize if this is a  
25 mistake that wasn't -- you know, we didn't see this before we

1 came to the hearing today. But that's not what the goal of  
2 the negotiated settlement was. We think that (indiscernible)  
3 more than the three or four weeks. And so --

4 THE COURT: All right.

5 MR. AZMAN: -- we would want --

6 THE COURT: So --

7 MR. AZMAN: -- the bar date notice to go out now.

8 THE COURT: All right. I think the -- I think we  
9 need to continue this motion, and hopefully the parties will  
10 confer and submit a form of order -- a form of order under  
11 COC. But in my view, that form of order, as long as -- if  
12 the notice is going to go out now or in the next few days,  
13 and it contains a description of when the bar date will be  
14 and when the schedules are going to be filed, and explaining  
15 that the creditor does not have to file a proof of claim  
16 until after the schedules are filed, that would resolve the  
17 issues that I would have with the motion.

18 So I'm going to ask the parties to -- I'm going to  
19 continue this motion and let the parties confer and come back  
20 to me. If you can't resolve it, contact chambers, and we'll  
21 get another hearing scheduled for you -- well, either Monday,  
22 Tuesday, or Wednesday next week.

23 MR. BONGARTZ: Thank you, Your Honor.

24 MR. AZMAN: Thank you, Your Honor.

25 THE COURT: All right? Anything else for today?

1 MR. BONGARTZ: I think we're moving on to the next  
2 agenda item, and I believe that is a retention application.  
3 I don't have the agenda in front of me right now, but one --  
4 excuse me one second.

5 MR. GROGAN: Your Honor, yes. We have the  
6 debtors' professionals' retention applications.

7 THE COURT: All right. Okay.

8 MR. GROGAN: If Mr. Bongartz is done, I will  
9 handle those.

10 THE COURT: Are they --

11 MR. BONGARTZ: There's one other motion that I was  
12 tasked with handling, that's the bidding procedures motion.  
13 I don't know if you want to take that out of sequence. I'm  
14 happy to do it either one.

15 THE COURT: Let's go ahead and do bidding  
16 procedures and then move on to retention.

17 MR. BONGARTZ: Okay. Okay. So the bidding  
18 procedures, that is Item Number 16 on the agenda.

19 Here, I just wanted to lay out real briefly the  
20 proposed time line, which includes a January 12th deadline to  
21 designate a stalking horse. The final bid deadline would be  
22 January 15. An auction, if necessary, would be held on  
23 January 18th. The objection deadline for the sale would be  
24 January 22nd, and then a sale hearing would happen in early  
25 February, subject to Your Honor's availability. We have

1 filed a blackline and a proposed order at Docket Number 225.

2 I understand that there are a couple of objections  
3 that have been filed. The first one is the limited objection  
4 of Jaime Schiller and other customers. Again, for the same  
5 reasons as stated earlier, we believe that that objection is  
6 mooted by Your Honor's ruling earlier today.

7 The second objection that was filed was filed by  
8 Mr. Arehart. And he had raised a concern that there were  
9 certain assets that Mr. Arehart believes are his property,  
10 and that there should be a provision in the proposed order  
11 that precludes -- in effect, precludes the sale of his  
12 alleged assets.

13 I would note that, at this point, we believe that  
14 his concerns are premature. There is no buyer lined up at  
15 this time. We don't know which contracts such buyer -- such  
16 hypothetical buyer would want to assume, what cure amounts  
17 would get paid. And so there's no -- and as a result, no one  
18 is currently proposing to purchase any cryptocurrency under  
19 the -- a bid procedures at this time. It is possible that  
20 that may be the case.

21 But I should also note that -- and one of the  
22 comments that the committee has made and that we have  
23 accepted is that, if cryptocurrency is to be sold through the  
24 sale process, that would require the consent of the  
25 committee.

1           And my final note on this is that Mr. Arehart's  
2           ability to object to the sale is when it happens. And to the  
3           extent it includes property that he believes is his property,  
4           he certainly has the ability to object to that at a later  
5           time.

6           THE COURT: Thank you, mister --

7           MR. BONGARTZ: And then the last -- the third  
8           objection which I wanted to address briefly is the objection  
9           -- the general objection by the U.S. Trustee. He has raised  
10          two issues, the first one is with respect to timing. Again,  
11          we believe that that is mooted by Your Honor's ruling  
12          earlier.

13          So I think we can move on to the second point, and  
14          that is the stalking horse protections. We believe that we  
15          have put in appropriate safeguards that should address the  
16          U.S. Trustee's concerns. There is a cap on any breakup fee  
17          of three percent. The committee's consent is required. And  
18          most certainly the U.S. Trustee's rights to object to the  
19          winning bid are fully preserved. So, to the extent that he  
20          disagrees with the selection of the stalking horse as --  
21          which, if he -- if that entity prevails at an auction and  
22          becomes a successful bid, the U.S. Trustee can object to that  
23          selection at that point, as well.

24          So, with that, we have submit -- submitted a  
25          revised proposed order that does reflect a few other comments

1 from the U.S. Trustee, including the addition in Paragraph 32  
2 of the appointment of an ombudsman if a sale -- if a sale  
3 does go forward. And we submit that, with these changes, the  
4 bid procedures order should be entered.

5 THE COURT: All right. Thank you.

6 Is Mr. Arehart's counsel on the call?

7 MR. NEFF: Yes, Your Honor. This is Carl Neff  
8 from FisherBroyles on behalf of Mr. Arehart. And I  
9 apologize, I'm not in Zoom -- oh, it looks like I'm  
10 connecting right now. I -- with me on the call is my  
11 colleague Hollace Cohen of FisherBroyles, who has been  
12 admitted *pro hac vice* in this action and will be addressing  
13 the Court.

14 THE COURT: Okay. Ms. Cohen?

15 (No verbal response)

16 THE COURT: Ms. Cohen, you're on mute.

17 MS. COHEN: This is Hollace Cohen, Your Honor.  
18 And we accept the debtors' view that the issues raised by  
19 both Mr. Arehart in the limited objection and by the debtor  
20 in their reply to the limited objection are premature, and  
21 that -- and also, the debtors' acknowledgment that Mr.  
22 Arehart will have the opportunity to object to any sale or  
23 sales on or prior to the sale objection deadline, so we're  
24 fine with that.

25 THE COURT: Okay. Thank you. I appreciate that,

1 Ms. Cohen.

2 MS. COHEN: Yes.

3 THE COURT: Mr. McMahon, are the U.S. Trustee's  
4 issues resolved, or do you have still have objections?

5 MR. MCMAHON: Your Honor, I have one point to  
6 raise, which is that having to do with the bid protections.

7 THE COURT: Okay. Go ahead.

8 MR. MCMAHON: There's a controlling Third Circuit  
9 case called environmental -- O'Brien Environmental Energy,  
10 which provides that bid protections are subject to  
11 administrative expense review. We -- first, we don't have a  
12 bidder here, so we'd have to know who the bidder is. And  
13 then, after notice and a hearing, once we have an agreement,  
14 then we can assess whether or not that person, that stalking  
15 horse is entitled to protection.

16 So -- and the case is very clear, Your Honor.  
17 There are some bidders who are naturally inclined to bid, say  
18 Michelin tires would theoretically buy -- you know, be a  
19 bidder for Goodyear. And therefore, you wouldn't need to  
20 incentivize a bidder with bid protections. So this entire  
21 construct, we don't go along with the -- you know, what I  
22 call a "putting money on the street" approach, where we --  
23 you know, we basically just authorize the debtors and the  
24 committee to hand out bid procedures like they're some form  
25 of candy.



1           You know, this Court controls the process. We  
2 don't know who the prospective bidder is that would be  
3 receiving the protections. At that point, the issue will be  
4 ripe and the Court can decide it. That's our concern, Your  
5 Honor. Thank you.

6           THE COURT: Well, is there anything in the order  
7 that says that these bid protections will be provided to  
8 anyone who bids, or is it -- because I agree with you, Mr.  
9 McMahon; O'Brien does say that there is the possibility that  
10 bid protections are not appropriate for certain bidders. So  
11 how can I provide providing bid protections to somebody  
12 before I even know who's doing it? Mr. Bongartz?

13           MR. BONGARTZ: Yes, Your Honor. We believe that  
14 the -- well, the first point I should note that is that the  
15 bid -- I'm sorry -- the stalking horse will be designated, so  
16 we will be filing a notice. This won't be, you know, kept in  
17 secret, who the stalking horse is.

18           The second point I would note is that we're not  
19 going to select or designate a stalking horse that's not  
20 fully supported by the committee, so that should provide, I  
21 think, an appropriate safeguard.

22           THE COURT: Well, do we need to put anything in  
23 this order, at this time, about what bid protections will be  
24 provided to an as-yet-undisclosed stalking horse bidder? Why  
25 don't we just wait and see what the stalking horse bidder

1 asks for?

2 MR. BONGARTZ: If that's Your Honor's ruling,  
3 we'll -- we will accept that, of course.

4 THE COURT: Okay. I think that's appropriate. I  
5 don't think it's appropriate, at this point, to put into an  
6 order, before we even know who the stalking horse bidder is  
7 going to be, that they are entitled to bid protections.  
8 That's something we can deal with once we get to the sale.

9 MR. BONGARTZ: Okay. We will revise the proposed  
10 order accordingly and submit it under certification of  
11 counsel.

12 THE COURT: Okay. Anyone else wish to be heard on  
13 this motion?

14 (No verbal response)

15 THE COURT: All right. So I will wait to see the  
16 revised order under COC, and once we get that, we can get it  
17 entered for you.

18 MR. BONGARTZ: Thank you.

19 THE COURT: All right. All right. Mr. Grogan,  
20 you were going to do the retentions?

21 MR. GROGAN: Yes, Your Honor. Thank you very  
22 much.

23 THE COURT: Okay.

24 MR. GROGAN: James Grogan from Paul Hastings on  
25 behalf of the debtors.

1           Your Honor, Agenda Item Number 11 is the debtors'  
2 application for entry of an order authorizing the employment  
3 of MACCO -- M-A-C-C-O -- Restructuring Group as financial  
4 advisor. That was supported by the declaration of Drew  
5 McManigle.

6           We did have a couple of objections, neither of  
7 which I think is material.

8           The first one, the U.S. Trustee had included the  
9 MACCO retention application in a general objection, which I  
10 believe is now moot. Basically, the issue was we need to  
11 wait and see whether a trustee is appointed before retaining  
12 the advisors.

13           We also received an objection from Mr. Inamullah.  
14 And I -- it was -- my interpretation of it was that he took  
15 issue with the conflicts list that was -- or the parties-in-  
16 interest list that was attached to the application, which  
17 listed him as one of the debtors' officers. You know, I  
18 don't think we're making any rulings on that list in this  
19 particular application, but I did want to note that that was  
20 out there.

21           Unless the U.S. Trustee had any further comments,  
22 I think this one is essentially uncontested.

23           THE COURT: Mr. McMahon, any objections to the  
24 retention?

25           MR. MCMAHON: No, Your Honor. The revised

1 proposed form of order is acceptable.

2 THE COURT: All right. Is Mr. Billion on the  
3 phone? I believe he was counsel to Mr. Inamullah.

4 (No verbal response)

5 THE COURT: No. Okay. So, to the extent he still  
6 had an objection, I'll overrule it and I will enter the  
7 order.

8 MR. GROGAN: Thank you, Your Honor.

9 If I might go out of order just a little bit, save  
10 Teneo for last. The next one would be the application to  
11 retain Paul Hastings as counsel to the debtors.

12 Your Honor, since the application was filed at  
13 Docket Number 64, we have filed two additional declarations  
14 in support of -- one was filed at Docket Number 182 and the  
15 second one was filed at Docket Number 233.

16 The U.S. Trustee had taken issue with several  
17 items in the application. In conferring with Mr. McMahon, I  
18 believe we have resolved one of those issues at this point.  
19 Mr. McMahon has objected based on Pillowtex with respect to a  
20 couple of invoices that were paid prepetition.

21 To resolve that, we have agreed that we would  
22 return \$313,330.40 to the trust account for the debtors and  
23 waive the associated prepetition fees, if we are retained by  
24 the court. As a result of that, the debtors' retainer  
25 account would increase to \$349,477.26.

1           However, I don't think that resolves all of the  
2 issues. The U.S. Trustee had also objected to a couple of  
3 additional issues. One was the prepetition work that Paul  
4 Hastings performed for the debtors and -- let me just sort of  
5 explain my interpretation and then, you know, I guess, we'll  
6 hear from Mr. McMahon.

7           So our view is that this should be governed, our  
8 disinterestedness, should be governed by Marvel Entertainment  
9 Group, the Third Circuit decision from 1998. It's reported  
10 at 140 F.3d 463.

11          The Marvel case holds that if a professional has an  
12 actual conflict, it cannot be employed. If a professional  
13 has a potential conflict, its employment is within the  
14 discretion of the court. And the court may not disqualify a  
15 professional on the appearance of a conflict alone.

16           Apologies, Your Honor. Choked up. It was a  
17 moving decision.

18          Since Marvel was decided as, you know, bankruptcy  
19 court in Delaware has issued a lot of interpretative  
20 decisions, one of which was relatively recent -- Art Van  
21 Furniture. Chief Judge Sontchi decided that. That -- the  
22 Art Van Decision was reported at 617 B.R. 509 B.R. Del 2020.

23           I think the situation here is relatively similar  
24 to Art Van. One of the issues that Mr. McMahon has taken  
25 issue with is that we have an existing client relationship

1 with a company called Uphold. Uphold is another  
2 cryptocurrency business.

3 We are currently representing -- and we discussed  
4 this in all three of the declarations I filed in support of  
5 our application.

6 We represent Uphold in matters unrelated to Cred.  
7 Prepetition, we had one matter that involved both Cred and  
8 Uphold. And it was a -- we agreed to advise Uphold and Cred  
9 jointly on some litigation that was filed in the state of  
10 Washington by a company called Decrypt Capital. And there  
11 were some additional plaintiffs related to Decrypt.

12 Our representation was very short and actually the  
13 Cred entity, which was Cred (US) LLC. It's one of the  
14 subsidiary debtors here, was dropped from the case. So a  
15 debtor is no longer an actual party in that litigation. At  
16 this point, it's purely a litigation between Decrypt and  
17 third parties, including Uphold, but we are not representing  
18 Uphold.

19 We're not representing any of the individual  
20 plaintiffs or, I should say, individual defendants. We have  
21 no role in the case at all. And the debtors have no role in  
22 the case. Other than that, all the other representations  
23 with Uphold have nothing to do with Cred.

24 In terms of whether there is an actual conflict  
25 there, there just isn't. Uphold has a claim against Cred

1 which, as the testimony earlier today shows, is being  
2 resolved.

3           Mr. Cousins, whose been handling that on behalf of  
4 the debtors, ably. Mr. Foster is in active negotiations with  
5 them. As he testified earlier, we expect to be filing a  
6 stipulation regarding the return of a very small amount of  
7 bitcoin. I think it's literally 2.4 bitcoin plus some  
8 additional forms of cryptocurrency that was held in an  
9 account with Uphold.

10           But there's no evidence that Paul Hastings is  
11 anything but disinterested in what happens with Uphold in  
12 this case. Uphold, as I put in my most recent declaration,  
13 represents .05 percent of Paul Hastings revenues over the  
14 last twelve months.

15           This exact same situation was litigated in Art Van  
16 Furniture. And in that case, the proposed debtors' counsel,  
17 which was ultimately approved for retention, had represented  
18 Wells Fargo which was actually a secured lender in the case  
19 and Wells Fargo represented .5 percent or ten times as much  
20 of the firm's avenue revenues.

21           Nevertheless, Judge Sontchi held that there was no  
22 actual conflict. I would also add that we received  
23 reciprocal waivers when the Decrypt engagement letters were  
24 signed. I have shared those with Mr. McMahon and his office.  
25 And, you know, there's just no actual conflict. There's not

1 even a potential conflict.

2 In addition, Mr. McMahon has taken issue with some  
3 of the other prepetition work that we did for Cred. In the  
4 first instance, we had advised Cred on the private placement  
5 convertible notes which were issued in the amount of \$2.6  
6 million dollars. And nobody has raised any issues regarding  
7 our advice on those private placement convertible notes.

8 One of the noteholders is actually a member of the  
9 creditors committee. In fact, it's the largest noteholder  
10 and the committee does not object to our retention in this  
11 case. Nobody has ever raised a single issue regarding that  
12 advice.

13 We also had advised Cred on some litigation  
14 against Mr. Alexander and what we did prepetition was we  
15 filed a lawsuit against Mr. Alexander in the state of  
16 California to get injunctive relief after it came to light  
17 that Mr. Alexander had taken 225 bitcoin as the court heard  
18 earlier today.

19 Not only has nobody questioned the quality of the  
20 work, as I attached the orders from the California court to  
21 the declaration that we filed at Docket Number 233, the  
22 California court granted both a TRO against Mr. Alexander and  
23 a preliminary injunction specifically finding that Cred was  
24 likely to succeed on the merits.

25 There is zero evidence that anything we did in



1 connection with that litigation was anything but flawless.  
2 There are no conflicts here at all. And so, we would request  
3 that the court approve our retention.

4 Thank you very much.

5 THE COURT: Thank you.

6 Mr. McMahon.

7 MR. MCMAHON: Your Honor, I'll be brief. Before I  
8 begin, I would like to start with just establishing what the  
9 record is, from our perspective.

10 The Grogan declaration, the supplemental  
11 declaration, will be the first two items. Third, we would  
12 like to submit certain of Mr. Shatt's testimony with respect  
13 to Uphold, specifically that Uphold's platform was the source  
14 of approximately 30 to 40 percent of the debtors' business.  
15 That's part of his deposition transcript, page 116, lines 10  
16 to 12.

17 Next, three U.S. Trustee exhibits relating to  
18 Decrypt which were part of the exhibits that we submitted to  
19 the court yesterday in connection with the hearing. There's  
20 two engagement letters, one for Cred, one for Uphold, that  
21 Paul Hastings has with those respective clients. And then,  
22 separately, the Decrypt amended complaint which is the third  
23 exhibit.

24 Finally, Your Honor, there are also two judicial  
25 notice documents we'd like to take notice of -- the Alexander

1 motion to dismiss and the Alexander complaint; provided that  
2 those are submitted or admitted in evidence, I'll proceed  
3 with my argument.

4 THE COURT: Any objection?

5 MR. GROGAN: Well, I do object to the admission of  
6 Alexander's motion if it's for the purpose of establishing  
7 the truth of the matters asserted. We disagree with it,  
8 obviously. If it's just for the purpose of establishing that  
9 a motion was filed, that's fine.

10 THE COURT: I will accept it only for that purpose  
11 and the other exhibits are either admitted or I will take a  
12 judicial notice of them.

13 (Trustee's Exhibit, Alexander Motion to Dismiss,  
14 Alexander complaint, received into evidence)

15 MR. MCMAHON: Thank you, Your Honor.

16 As stated in our objection, Section 327(a) of the  
17 Bankruptcy Code provides that counsel to a debtor-in-  
18 possession has to meet two requirements. It can neither hold  
19 nor represent an interest adverse to the estate and, second,  
20 it must be a disinterested person.

21 And that definition is in the Code. I'm not going  
22 to repeat it (indiscernible) that. It provides that -- Your  
23 Honor, may I have one moment?

24 THE COURT: Sure.

25 MR. MCMAHON: I'm sorry. Thank you.

1 THE COURT: Yes, go ahead.

2 (Pause)

3 MR. MCMAHON: I'm sorry for the interruption, Your  
4 Honor.

5 THE COURT: That's all right.

6 MR. MCMAHON: A disinterested person is a person  
7 that does not have an interest materially adverse to the  
8 interest of the estate or any class of creditors or equity  
9 security holders by reason of any direct or indirect  
10 relationship to connection with or interest in the debtor or  
11 for any other reason.

12 In our objection, we point out four areas of  
13 concern. First, the convertible note representation.  
14 Second, the representation of the debtors in connection with  
15 the response and in the corporate fix with respect to  
16 corporate governance issues involving Cred Capital. Third,  
17 the Uphold issues with respect to these cases. And then,  
18 fourth, the Pillowtex related issues.

19 I'll take each concern in turn.

20 The convertible note placement, the sheer timing  
21 of same within ninety-days prior to the debtors' bankruptcy  
22 filings means that the placement is going to be subject to a  
23 level of scrutiny in connection with these cases, certainly  
24 after the examiner has been appointed by Your Honor.

25 Next, the court for governance issues involving

1 Cred Capital. The issue here is such where if the court  
2 agrees with Alexander's view of the legal fact of the steps  
3 that Cred took with Paul Hastings' counsel which allegedly  
4 included a reorganization of Cred's equity structure at the  
5 expense of the sole voting class of equity and Cred Capital,  
6 then the bankruptcy filing by Cred Capital was not  
7 authorized.

8           Next, Paul Hastings was retained by Uphold and  
9 Cred in connection with the Decrypt litigation in mid-  
10 September that predates Paul Hastings retention by the  
11 debtors in connection with the bankruptcy which didn't occur  
12 until later in October.

13           With reference to Uphold, Your Honor, Paul  
14 Hastings has what we believe to be an actual conflict of  
15 interest. Paul Hastings represented to Cred and Uphold  
16 entities jointly, then at the point at which the debtors  
17 filed for bankruptcy protection, Your Honor is going to hear  
18 about this, the past couple of days.

19           Their interest clearly diverged. Uphold will be  
20 asserting claims against the debtors in connection with these  
21 bankruptcy cases and Uphold's claims against the debtors  
22 stemming from the uniform protocol token offering which is  
23 the subject of the litigation, the Decrypt litigation, are  
24 going to be part of those claims.

25           Standing here today, Your Honor, Paul Hastings

1 cannot represent the debtor with respect to those claims. In  
2 fact, Your Honor got a flavor for it earlier today when Mr.  
3 Cousins handled, you know, the Uphold related issues. That's  
4 an actual conflict of interest. And --

5 THE COURT: Does that resolve the issue? I Mr.  
6 Cousins can represent any claims from Uphold, can he deal  
7 with those and how does that affect then the retention of  
8 Paul Hastings?

9 MR. MCMAHON: Your Honor, because it doesn't  
10 change the fact that the firm, whatever they have, the actual  
11 conflict of interest. It certainly addresses the need for  
12 Uphold's, I guess, ability to have un-conflicted counsel, but  
13 the law firm, it doesn't address any issues with respect to  
14 the law firm itself.

15 THE COURT: Well don't we appoint conflict's  
16 counsel all the time in cases when the bankruptcy counsel has  
17 a conflict, we appoint a conflict counsel to deal with any  
18 issues involving that particular party.

19 MR. MCMAHON: And, Your Honor, again, that, you  
20 know, understood that that does occur with respect to certain  
21 types of matters. I mean this is a situation where Mr.  
22 Schatt testified that he estimates that Uphold's platform was  
23 the source of approximately 30 to 40 percent of the debtors'  
24 business. Uphold and its customers are a significant part of  
25 these bankruptcy cases.

1           This is not like a bit proof of claim issue.  
2 Uphold has got a significant relationship with the debtors.

3           For the record, Your Honor, the proposed Pillowtex  
4 resolution by Paul Hastings involved in what Mr. Grogan  
5 described would resolve our issues with respect to that  
6 point.

7           So, Your Honor, we view the Uphold issues here as  
8 presenting an issue of actual conflict which is disqualifying  
9 under the language. But, you know, with respect to Your  
10 Honor the representations of the debtors in connection with  
11 the Cred Capital situation and the convertible note placement  
12 while there's a potential, they are also troubling meaning  
13 that, you know, because of the nature of the work that was  
14 performed, they very well could become ripe at some point and  
15 this court has a discretion to do something about them at  
16 this juncture with respect to that.

17           So, you know, Your Honor, we raised a point about  
18 Rule 2014 disclosures here. If the court compares its  
19 understanding of Paul Hastings' services before and after,  
20 reading the supplemental declaration that was submitted, that  
21 filing makes the U.S. Trustee's point, meaning that all of  
22 the information contained in the supplement was available to  
23 the firm at the time it followed its initial employment  
24 application.

25           The entire point of that rule is that parties in

1 interest shouldn't have to ask for the information that was  
2 provided in the supplement.

3 So, Your Honor, we believe that there are certain  
4 potential conflicts in play here where the Uphold issue is  
5 significant and it's different. And for that reason, Your  
6 Honor, we ask the court to deny the application.

7 THE COURT: Mr. Grogan, any rebuttal?

8 MR. GROGAN: Your Honor, do you want to hear from  
9 me? I think committee counsel might have wanted to be heard  
10 on this as well.

11 THE COURT: Oh okay. Let me hear from committee's  
12 counsel.

13 If you're speaking, you're on mute.

14 Committee's counsel has decided not to be heard on  
15 this issue.

16 MR. WALSH: Your Honor, it's (indiscernible)  
17 again. I need to upgrade a little bit.

18 You know, we've gone through, we've looked at the  
19 objections raised by the U.S. Trustee and the responses by  
20 debtors' counsel. And just for what it's worth, Your Honor,  
21 we don't see it as an impediment and it definitely hasn't  
22 been an impediment, to date, with respect to the activities  
23 we've been engaged in with the debtors.

24 So, we support their retention, Your Honor.

25 THE COURT: Thank you, Mr. Walsh.

1 MR. GROGAN: Your Honor, there cannot be an  
2 imagined actual conflict. The Uphold Decrypt litigation does  
3 not involve a debtor. There is no way that we have a  
4 conflict related to litigation among third parties where we  
5 literally represent none of those parties. That is what is  
6 actually happening in Decrypt. The debtor was dropped from  
7 the case. I am representing non-parties at this point of  
8 that litigation.

9 With respect to the other issues with Uphold. You  
10 know, it's no different than Wells Fargo. Wells Fargo in the  
11 Art Van Furniture case was the secured lender with an all-  
12 asset lien. It was a big deal in the case. Frankly, I don't  
13 think Uphold comes anywhere close to, you know, having the  
14 same status as the secured lender with an all-asset lien.

15 Sure, they may have referred some customers to us.  
16 Sure, we had a small position of cryptocurrency that they  
17 were holding on the petition date. But that doesn't rise to  
18 the level of an actual conflict where all the matters that we  
19 have with Uphold currently as a firm have nothing to do with  
20 (indiscernible). And there is zero evidence that we have not  
21 diligently and aggressively represented this company  
22 throughout the Chapter 11 cases.

23 So, I think we're disinterested. I think the  
24 record shows it. We've worked around the clock to represent  
25 the debtors' interest in every situation. And, you know, as



1 a firm we sometimes defer to conflicts counsel to avoid the,  
2 you know, the difficulty of dealing with your own clients in  
3 bankruptcy but that's why Mr. Cousins is handling it.

4 THE COURT: All right. Well, obviously,  
5 allegations of conflicts of interest of counsel is a serious  
6 issue and I want to take a little bit of time to go back and  
7 look at the affidavits and the other evidence that the  
8 parties have submitted, so I'm going to take it under  
9 advisement.

10 Off the top of my head, at this point, I don't see  
11 an actual conflict of interest, but I just want to look at it  
12 again myself to make sure that I'm comfortable with that  
13 before I give you a ruling, but I will do that as quickly as  
14 possible.

15 MR. GROGAN: Thank you, Your Honor.

16 Next on our agenda is the debtors' application for  
17 entry of an order authorizing the retention of Teneo Capital.

18 Your Honor, we received an objection to this  
19 application from the U.S. Trustee's office. It really falls  
20 into two categories. One, the U.S. Trustee objected to the  
21 tail fee.

22 Essentially, what Teneo -- the terms of Teneo's  
23 application would entitle it to a transaction fee if a  
24 transaction is consummated within twelve months after  
25 termination. We view this as a standard within market

1 provision. It protects Teneo from doing a lot of work. And  
2 if for some reason this case does not work out as we hope it  
3 will and a subsequent trustee takes advantage of the work  
4 that they've done to line up buyers, they're entitled to some  
5 benefit from that, and that's what the tail fee provides.

6 The U.S. Trustee also objected to some of the  
7 disclosures. Let me explain the situation there.

8 One of the --

9 THE COURT: If you are -- yeah, someone is not  
10 muted. Operator, if you can identify that person, would you  
11 disconnect them, please?

12 MR. GROGAN: So one of the professionals that's  
13 working on the Teneo team is a fellow named Matt Shapiro.

14 THE COURT: Hold on one second. We still have it.

15 Operator, can you identify who that is with an  
16 open line who's speaking?

17 Operator, can you hear me?

18 OPERATOR: Yes, I can.

19 THE COURT: Can you identify who that is and  
20 disconnect them from the call?

21 OPERATOR: I'm trying.

22 THE COURT: Okay. Thank you.

23 MR. GROGAN: Thank you, Your Honor.

24 Would you like me to continue or wait?

25 THE COURT: Let's wait a second and see if we are

1 clear of this.

2 OPERATOR: I've identified the line.

3 THE COURT: Okay. Thank you, operator. I  
4 appreciate it.

5 All right, go ahead, Mr. Grogan.

6 MR. GROGAN: Thank you.

7 So the issue is that Teneo has contracted with a  
8 cryptocurrency specialist to work with the team on this  
9 particular engagement. His name is Matthew Shapiro. He  
10 works at a firm called Multicoin. And he has a tremendous  
11 amount of cryptocurrency experience which we think will be  
12 invaluable in terms of identifying perspective buyers and  
13 also addressing the issues that will likely come up during  
14 the sale process.

15 There were connections that Teneo identified that  
16 have to do with Mr. Shapiro's employment with Multicoin.  
17 Those connections have been shared with the U.S. Trustee's  
18 office; however, the U.S. Trustee has requested that we file  
19 a supplemental declaration making these disclosures public.

20 That would be a violation of Mr. Shapiro's  
21 employment agreement with Multicoin; however, he has  
22 disclosed that these are -- these investors in Multicoin do  
23 hold amounts that are less than one million dollars and I  
24 think the U.S. Trustee has all of the information to evaluate  
25 whether or not there's any concerns there. It just comes

1 down to whether or not it would become public.

2 And on that front, you know, we just -- Mr.  
3 Shapiro cannot be put into a position where he would have to  
4 publish confidential information that would likely result in  
5 the termination of his employment with Multicoin.

6 So, for that reason, we would request that the  
7 court give us some grace on that, just given the facts that  
8 we're having to deal with. And it's not a lack of disclosure  
9 to the trustee. It's just does the public need to know who  
10 investors in Multicoin happen to be. We don't think that  
11 that's necessary.

12 He has made every disclosure that he can,  
13 including the fact that he has this relationship with  
14 Multicoin. It's just, you know, how deep do we have to dive.

15 We also have received some comments, informal  
16 comments, to the application from the committee. And to  
17 resolve that, the form of order has been revised.

18 Teneo has agreed to modify the compensation and if  
19 the sale proceeds exceed \$10 million dollars, Teneo would  
20 agree to credit one half of the monthly fees that they earned  
21 presale, preclosing against the ten plus -- against the  
22 transaction fee that they would earn on a transaction for  
23 more than \$10 million dollars. If the sale proceeds are less  
24 than ten million, there would be no crediting. And I believe  
25 that resolves the committee's issues.

1           With that, Your Honor, we would request that you  
2 approve the retention of Teneo.

3           THE COURT: Okay. Let me hear from Mr. McMahon.

4           MR. MCMAHON: Your Honor, very briefly.

5           First, the revised proposed form of order is  
6 acceptable to us.

7           Second with respect to the disclosure issue, we've  
8 offered to Teneo and the debtors, you know, to the option of  
9 filing, proposing to file the disclosure under seal, pursuant  
10 to Rule 2014, just so that what it is that is of import to  
11 the disclosure requirements of the Code are filed of record.

12           So that's our key concern there just meaning that  
13 it's part of the court's record. So, if they don't want to  
14 disclose it publicly, seeking to file it under seal is an  
15 option. And that's our argument.

16           Thank you.

17           THE COURT: Mr. Grogan, any issue with filing it  
18 under seal?

19           MR. GROGAN: Yes. Unfortunately, Mr. Shapiro was  
20 unable to do that because an order sealing a document can be  
21 eventually unsealed. And he could not take that risk.

22           THE COURT: Well, I'm not sure there's a legal  
23 basis for me to say that because he is afraid it might get  
24 unsealed sometime in the future, he's not obligated to  
25 provide the information that's required by the Code.

1 MR. GROGAN: Well, I don't -- I mean I know that  
2 the U.S. Trustee wants this disclosure, I don't think there's  
3 anything in the Code that requires it. What we're talking  
4 about are investors in Multicoin. And Mr. Shapiro has  
5 disclosed that he has an employment relationship with  
6 Multicoin. It's just, you know, do we need to go that extra  
7 step of disclosing who owns Multicoin.

8 THE COURT: Mr. McMahon, why do we have to  
9 disclose who the owners of an entity are that Mr. Shapiro  
10 works for?

11 MR. MCMAHON: Because, Your Honor, the link to  
12 these bankruptcy cases is that that's the connection that's  
13 germane. Like, in other words, that's the critical  
14 information is to why we even need to have to the disclosure  
15 in the first place.

16 So, again, you know, Rule 2014 says what it says,  
17 full disclosure of connections. And the more opaque these  
18 documents get, owners, you know -- a couple of owners in my  
19 employer are customers and claimants of Cred. Well, what  
20 does that really tell me? And if you can come out and say  
21 that publicly, but it tells me nothing. It keeps me  
22 guessing.

23 So, you know, all I want is an accurate statement  
24 of what the connection is as part of the court's record and,  
25 again, sealing is not an issue.

1           THE COURT: Well, I think if Mr. Shapiro wants to  
2 be involved, we need to have a disclosure but I'm not sure  
3 that it's necessary to disclose who the principals are of an  
4 entity that you work for.

5           If we were to take that to its full extent, you'd  
6 have to do that in every case for every entity. That if  
7 someone says they work for IBM, do they have to disclose  
8 every shareholder of IBM because they might be a creditor in  
9 the case? I don't think that's the case.

10           And I think as long as Mr. McMahon has received  
11 the information that he needs to satisfy himself that there  
12 is no potential connection. And we have disclosed that he  
13 works for Multicoins, I think that's sufficient at this point.  
14 So, I'm not going to order him to disclose who the owners of  
15 Multicoins are.

16           So with that, I'll overrule the objection then and  
17 enter the order.

18           MR. GROGAN: Thank you, Your Honor.

19           Okay. The last retention is the motion under  
20 Section 363 for engaging a chief restructuring officer, and  
21 additional employees from Sonoran Capital. This is Matt  
22 Foster's firm.

23           I think that the -- Mr. McMahon can correct me if  
24 I'm wrong, but I think that the only issue there was the  
25 possibility of duplication of effort between Sonoran Capital

1 and MAACO. I think Mr. Foster has filed a supplemental  
2 disclosure which provides additional information regarding  
3 the allocation of responsibilities, as well as the disclosure  
4 of any additional employees that will be working for him  
5 through Sonoran Capital.

6 I'll leave it to Mr. McMahon to weigh in, but that  
7 may be sufficient.

8 THE COURT: Mr. McMahon.

9 MR. MCMAHON: Your Honor, with respect to where  
10 we're at with this, clearly, I think that -- we made a point  
11 with respect to J. Alix Protocol which we kind of closely  
12 guard because it provides a set of rules regarding these  
13 types of retentions under 363 as to what, you know, should  
14 happen.

15 Immediately before the hearing, I did, this one,  
16 just because there's been such a volume of issues in  
17 connection with these cases, I forwarded certain, I guess,  
18 cleanup comments to the proposed order that I think would be  
19 agreeable to Sonoran and would finally address our concerns  
20 in full.

21 So, I don't know if debtors' counsel is willing to  
22 do this, but if we could possibly adjourn that briefly with  
23 the intention of submitting a revised order under  
24 certification of counsel as early as Monday, that would be  
25 our preferred way of handling this.



1 THE COURT: Mr. Grogan?

2 MR. GROGAN: You know, if we can get it resolved  
3 that would be great. I'm going to rely on Mr. Bongartz a  
4 little bit. Did you get -- Mr. Bongartz, do you have the  
5 cleanup comments?

6 MR. BONGARTZ: I do. We need to -- I just want to  
7 have a chance to talk to Matt Foster and Sonoran to make sure  
8 that they are acceptable for them as well, but in principle I  
9 think we can get there.

10 MR. GROGAN: Okay. Great.

11 So, we'll adjourn that one, I guess, to January  
12 6th in case we can't resolve it.

13 THE COURT: Okay. That's fine.

14 MR. COUSINS: Your Honor, it's Scott Cousins  
15 again. This is one heck of an agenda. I think the two  
16 motions have been addressed for Trustee examiner Chapter 11  
17 trustee.

18 As we mentioned at the beginning of the  
19 afternoon's hearing, UpgradeYa is pushing and the debtors are  
20 in agreement, their motion until January 6th. So, unless  
21 someone else is picking up something that I missed, I think  
22 that's it for today.

23 THE COURT: All right. Anybody else have any  
24 other issues then before we adjourn?

25 (No verbal response)

1 THE COURT: All right. Well thank you all very  
2 much. As I said, I will -- I'm going to take a look at the  
3 Paul Hastings retention issue and I'll wait to see the  
4 uploaded forms of order and, otherwise, I will guess I'll see  
5 everybody on January 6th for our next hearing, unless  
6 something else pops up unexpectedly.

7 I'll wish everybody happy holidays and a happy New  
8 Year and I'll see you in 2021.

9 UNIDENTIFIED SPEAKER: Likewise, Your Honor. Thank  
10 you.

11 (A Chorus of "Thank you, Your Honor")

12 THE COURT: All right, we're adjourned. Thank  
13 you.

14 (Proceedings conclude at 4:45 p.m.)  
15  
16

17 CERTIFICATE  
18

19 I certify that the foregoing is a correct transcript  
20 from the electronic sound recording of the proceedings in the  
21 above-entitled matter.

22 /s/Mary Zajackowski  
23 Mary Zajackowski, CET\*D-531

December 21, 2020

24 /s/Coleen Rand  
25 Coleen Rand, AAERT Cert. No. 341

December 21, 2020